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ABSTRACT

This handbook is designed to serve as a report on negotiations that took place during the 104th and 105th Congresses that lead to the passage of the Individuals with Disabilities Education Act (IDEA) amendments of 1997. In addition, the events and changes in the cultural climate during the 106th Congress and its impact on IDEA is also discussed, along with the likely impact of the 107th Congress and the George W. Bush administration. Specific chapters of the handbook address: (1) the nature of American politics; (2) judicial and legislative beginnings; (3) special education before the 88th Congress; (4) opposition from President Nixon; (5) the guarantee of FAPE (free appropriate public education); (6) the establishment of the U.S. Department of Education; (7) the politics of educational inclusion; (8) the impact of family experiences on public policy and the influence of congressional staff; (9) the results/accountability initiative; (10) the HOPPE group and final mark-up; (11) Republican congressional opposition to proposed regulations; and (12) the increase in students with disabilities. The book concludes that many of the same issues that were present when IDEA was passed in 1975 still exist. (Contains 48 references.) (CR)

ED 455 633

The Individuals with Disabilities Education Act & the Nature of American Politics
A Handbook on Public Policy

Salvatore Pizzuro

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A Handbook on Public Policy

Salvatore Pizzuro

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PREFACE

THE 107TH CONGRESS CONVENES

This handbook serves as a report on the negotiations that took place during the 104th and 105th Congresses, leading to the passage of Public Law 105-17, the Individuals with Disabilities Education Act amendments of 1996. In addition, the events and change in the cultural climate during the 106th Congress, and its impact on IDEA, is also discussed. Furthermore, the likely impact of the 107th Congress and the George W. Bush administration, will also be evaluated.

George W. Bush was declared the winner of the 2000 Presidential election, following five weeks of post-election chaos. He was sworn in as the nation's 43rd President on January 20, 2001, with crises ahead of him. The relationship between the Bush White House and the Democratic members of the Congress will not be congenial. The President's nominees for Cabinet positions are coming under attack. Adding to the potential crisis, both houses of Congress are sharply divided. The election results produced a House of Representatives with a bare Republican majority. The total numbers are no different than the 106th Congress; the Republicans have enough of a majority to select the Speaker of the House and the Committee chairpersons. The Democrats have enough votes to create gridlock. The elections produced an even greater dilemma in the Senate. There is an even 50-50 split among Republicans and Democrats, with the Vice-President of the United States, Dick Cheney, exercising his power as the President of the Senate in casting the

deciding vote. The Senate has decided to address the issue establishing equity on committees for the first time in its history. Both Democrats and Republicans will have the same number of members and staff, as well as an equal budget.

INTRODUCTION

Washington, DC
March, 1975

United States Senator Harrison Williams of New Jersey pondered the possibility of gaining the support of his fellow Senators from both sides of the aisle. He had recently introduced a bill that would lead to the most sweeping changes in public education in America's history. Furthermore, his bill, Senate bill # 6, would also lead to the singular most comprehensive intrusive of the Federal government into American public education. S. 6 was considered by the Senator's opponents to be a dictatorial piece of legislation that violated the decision-making rights of the States and local school districts. If both Houses of the Congress passed the bill, he would become a hero to many. If it failed, his political career could be in jeopardy.

Lisa Walker, a member of the Senator's staff, worked feverishly to build support among the professional organizations. The Council for Exceptional Children (CEC), the Association for Retarded Citizens (ARC), and other groups, quickly pledged their support. Nevertheless, a conservative group within the Congress was committed to defeat S.6 at all costs. Even worse for Senator Williams, the President of the United States, Gerald Ford, was opposed to the bill, and was prepared to lobby his friends on Capitol Hill to prevent passage. Lisa Walker, however, was a stern, disciplined Capitol Hill professional staff member, and she lobbied the Senator's friends on Capitol Hill to ensure passage.

In addition, she had developed a close working relationship with CEC and ARC.

Dr. Ed Martin, the Director of the Bureau on the Education of the Handicapped (BEH), supported passage of the bill. Lisa had by now developed a close working relationship with Dr. Martin and BEH, as well. Ed Martin had formerly served as a staffer for Congressman Hugh Carey of New York. Along with the members of Congressman Adam Clayton Powell's staff, Martin had been instrumental in the passage of the Elementary and Secondary Education Act in 1965, and the Act's amended version which created funding for Special Education in 1966. Years later, Martin would consider the fight for the passage of S.6 to be among his greatest achievements.

Senator Williams projected the image of a tall, erect intellectual. He was handsome, articulate, and charismatic. As a politician, he delivered his position on a public policy issue with panache. Williams planned to use his charm to win the votes of the conservative right, as well as the liberal left; he did not intend to lose.

Why did S.6 attract so many determined opponents? If passed, the bill would guarantee a free and appropriate education to all children with disabilities in the United States between the ages of five and twenty-one. The President and conservative members of the Congress believed that the Constitution clearly specified that only the States and local school districts could decide who should be educated and how they should be educated. The battle for S.6 would change the direction of federal public policy for decades to come.

THE PRELUDE

During the first session of the 104th Congress, the author was invited by the Chairman of the House Committee on Economic and Educational Opportunities to serve as the chairman of a national commission of educators, researchers, and attorneys that would develop pilot projects which, when included in the Individuals with Disabilities Education Act, would examine the impact of State and local flexibility on the academic achievement of special education students in America's schools.

During the 105th Congress, the author served as a consultant to House members from the minority party on the reauthorization of the Individuals with Disabilities Education Act. As part of the effort, the author engaged in designing amendments which would provide procedural safeguards for special education students who would be de-classified and returned to the regular education environment, without support. Congressman Major Owens tried unsuccessfully to have the amendments adopted at the final mark-up for the bill. In addition, the author prepared amendments dealing with special education opportunities for educationally disabled youth who reside in correctional facilities. Unfortunately, Congressman Donald Payne was also unsuccessful in having the amendments adopted at the final mark-up for the bill.

This book will also provide an encapsulated history of the political evolution that took place prior to the passage of Public Law 94-142, the Education of All Handicapped Children Act, in 1975. The passage of this bill was a bi-partisan effort of the overwhelming majority of the members of both houses of the Congress, as was the initial passage of the Elementary and Secondary Education Act, nearly

ten years earlier. Unfortunately, as we approach the early days of the 107th Congress, both Acts of legislation, and the services they provide, have generated partisan issues, with each of the two major parties taking adversarial positions. Fragmented wings of the Republican Party will assume conflicting positions on the reauthorization of legislation that will provide a continuance of federal aid to education and implement federal mandates that will install a modicum of control over those programs. The conservative wing of the Party will continue to demand that all decisions regarding the education of American's children be made at the state and local level. In addition, conservatives will insist that the federal fiscal role on education will make it more difficult to maintain a balanced federal budget. The moderate wing of the Republican Party will support continued federal aid to education, with many congressional members willing to send more than their share of federal dollars to their home districts. Most Democrats will support the position of moderate Republicans on the issue of federal aid to education, However, Democrats will also support the strongest federal mandates possible.

Constituent attitudes will also play a large and influential role in the decisions that the members of the Congress will make regarding education policy and funding. Members of the Congress from both political parties will continue to support funding and projects that will benefit their home districts. However, Congressmen from conservative districts will be reluctant to support legislation that gives the federal government more powers. Similarly, Congressmen from liberal districts will be reluctant to support legislation that gives the federal government less power.

U.S. SUPREME COURT, 1953

CHIEF JUSTICE-
FRED M. VINSON,
KENTUCKY

ASSOCIATE JUSTICES:

HUGO BLACK, ALABAMA
STANLEY REED, KENTUCKY
FELIX FRANKFURTER, MASS.
WILLIAM 0. DOUGLAS, CONN.
ROBERT JACKSON, NEW YORk
HAROLD BURTON, OHIO
TOM CLARK, TEXAS
SHERMAN MINTON, INDIANA

U.S. SUPREME COURT, 1955

CHIEF JUSTICE-
EARL WARREN,
CALIFORNIA

ASSOCIATE JUSTICES:

HUGO BLACK, ALABAMA
STANLEY REED, KENTUCKY
FELIX FRANKFURTER, MASS.
WILLIAM O. DOUGLAS, CONN.
JOHN HARLAN, NEW YORK
HAROLD BURTON, OHIO
TOM CLARK, TEXAS
SHERMAN MINTON, INDIANA

PART ONE:

THE NATURE OF AMERICAN POLITICS

> Most of the problems of
> our political life can be traced
> to the failure of the dominant
> ideologies
> of American Politics, liberalism,
> and conservatism.
> (E.J. Dionne, Jr. Why Americans
> Hate Politics, 1991)

The term 'Politics' has assumed many definitions. David. Maraniss (1990), author of the Clinton biography "First in His Class", recounts a commencement address delivered by Governor Clinton at Arkansas State University in 1976, in which the Governor tells the graduating class that American culture, with its disorganized and disconnected persona, may prevent politics from becoming an honorable profession. Abraham Lincoln is reported to have pursued American Politics because it represented what the nation stood for, economic growth and progress (Donald, 1995). An ancient, sixty year old dictionary that once belonged to my parents defines politics as "social conniving for personal gain". A soft cover dictionary defines politics as "competition between groups or individuals for power and leadership". An often used definition of politics in Washington is "the art of getting others to follow your agenda". When young Theodore Roosevelt considered entering the political

world, he was told that politics was populated by "saloon keepers and other such unsavory characters" (Collier and Horowitz, 1994).

The language of American Politics is anything but direct. In order to achieve a political agenda, American politicians have learned to design their language so that the fewest people are offended. Inevitably, such a process results in hiding the true agenda. Bennett (1992) has defined the language of modern American Politics as pre-verbal rather than pro-verbal. According to Bennett, "the new political strategy is slippery by design". The goal of achieving one's agenda supersedes the need to communicate with the public. Furthermore, the evolution of American politics may have led to the standard which recognizes the need to create environments from which the political parties, rather than the greater society, can benefit. According to Bellah, Madsen, Sullivan, Swidler, and Tipton (1991):

> As government and politics have become central to American life, the political arena has not effectively formulated a vision of a common good. Rather , the political arena has become dominated by a congeries of private interests (best symbolized, perhaps, by the increasing significance of single-issue political action committees), which fight it out without regard to how outcome affects the good of the community as a whole (pg.131).

The geographic nature of politics, -albeit local, regional, national, or global -, generates no agreement. Tip O'Neal, the famous, late speaker of the House of Representatives, was fond of saying that "all politics is local". Of course, O'Neal, who served as Speaker of the lower House in the Massachusetts State Legislature prior to being elected to the U.S. House of Representatives, may have practiced politics on every level other than local. Adam Clayton Powell believed that Politics must be combined with protest (Hamilton, 1991). In Powell's case, election politics overlapped with protest politics in a way that allowed the two processes to complement each other. During the course of this book, we will discuss how Powell's skillful manipulation of the two forms of politics made possible the federal intervention into education in America.

As the President of Princeton University, future United States President Woodrow Wilson toiled over the writing of "The Philosophy of Politics", in which he described the slow, methodical process of democratic evolution of politics to be a product of the culture of society. The relationship of education and politics on the federal level reveals two basic schools of thought. The first school, usually attended by most democrats and liberal Republicans, subscribes to the philosophy that a strong central (federal) government is necessary, and its mandates on social and educational policy should supersede the policy of the individual States. The second school, usually attended by most Republicans and conservative Democrats, subscribes to the policy that the individual States should be the masters of their own policy, and the federal power in social and educational issues should be decentralized, with the power being returned to the States.

The American political system,

broadly understood, maintains
a number of institutional means for
combining
government effectiveness with
accountability
and protection of rights, including
the courts,
the election process, and the
balance between
the executive and legislative
branches within
the federal government
(A.J. Reichly, The History of
American Politics, 1992)

The basic difference in philosophy and political direction has led to a power struggle on Capitol Hill over the direction of education policy. Most Democrats believe that the way in which children should be educated should be uniform among the States, and the rules and regulations that apply to the method of education should be dictated by the Congress. Most Republicans believe that the States and local school districts should make all the decisions regarding the education of their children. No governing body, they maintain, should decide who the States should educate, or how they should be educated.

Prior to the opening of the 104th Congress on January 3, 1995, the development of special education legislation was primarily non-partisan. Beginning with the passage of Public Law 94-142 twenty years earlier, Republicans and Democrats worked together in developing legislation that guaranteed a "Free and Appropriate" education to children with disabilities. Similarly, there was little disagreement regarding the mandate of the Individualized Education Plan (IEP) or the concept of the Least Restrictive Environment (LRE). However,

the Republican revolution, as expressed by House Speaker Newt Gingrich, among others, created a bi-partisan environment that affected education and social issues. The identity of political parties, which has always been present in the Congress, began to assert itself regarding special education programs. In addition, the political party identity manifested itself in a way that was more consistent with American Politics than it had in the past. According to Seib:

> Political parties have an identity that extends beyond personalities, one that is more substantive than the fine-sounding rhetoric that makes up the party platform approved by delegates at the quadrennial national conventions. Party identity, if it is to have real meaning, must be based on a solid legislative record..... (pg. 31).

The presidential elections of 1860 and 1864 may have provided the strongest illustration of the extent to which the ultimate philosophy of the party in power could affect the future of the country. In both elections, the Republican Party selected a candidate who supported the concept that the power of the federal government should be central to the continuance of the Union. The autonomy of the Individual States, according to Lincoln's view, was a lesser priority. In turn, the Democrats selected candidates (Stephen Douglas in 1860, George Mclellan in 1864) who believed that the autonomy of the States should supersede the power of the federal government. Today, the two major parties have

switched positions on the issue, but the primary issue remains.

A consequence of this disagreement has been a struggle over the dismantling of federally mandated education programs, among them services for children with disabling conditions in America's schools. Presidential vetoes, pocket vetoes, threats of vetoes, filibusters, continuing resolutions, and suspension of the rules in the Congress have been exercised since the early 1960's as part of the battle. American politics, in its uniqueness, determines the content and quality of educational services that the nation's children will receive. Richard Nixon (1988) described America as a nation that will never get lost in complacency; success is not only desired, it is expected. Many Congressional leaders have begun to define the expected success in special education. Success, they believe, cannot be documented by two variables, academic success and school/ employment success. In the view of conservative members of the Congress, service delivery does not lead to either form of success. Since the Individuals with Disabilities Education Act is based on providing children with special needs with access to education, many Congressional leaders believe that it is natural to expect academic achievement. Without such achievement, they suggest, there can be no measurable return on the investment (federal dollars). Without a return on the investment, conservative Congressional leaders point out, there is no justification for providing special education services.

May, 1997

I sat in the Rayburn House Office Building in disbelief. I came to Washington from New jersey believing that the reauthorization of the Individuals with Disabilities Education Act, would, in the long run, leave the civil rights portion of the Law unaffected. During the previous thirty months, there had been talk, promises, and idle threats. Democrats and a few liberal Republicans believed that IDEA represented the "Holy Grail" in Washington and was clearly "untouchable". Republicans, and a few conservative, 'school reform" Democrats, declared that the federal power behind the civil rights mandate was not only unnecessary, but dangerous. Education policy, they believed, should be decided by the States and local school districts, not the United States Congress.

Other Conservative members had called for the outright appeal of this Law, along with other Acts of federal legislation which, they believed, placed too much power in Washington. In an effort to place a halt to this thinking, Congressman Major Owens of New York, an advocate for Special Education, provided an analogy that compared IDEA to the 1964 Civil Rights Act. If decisions had been left to the States, rather than the federal government, Congressman Owens pointed out, we would still have segregated schools and segregated lunch counters.

On this day, the House Committee on Education and Economic Opportunities, chaired by Representative William F. Goodling of Pennsylvania, was holding a final mark-up on the Individuals with Disabilities Education Act, before sending the reauthorization bill to the House floor for a vote.

Prior to driving to the nation's capitol, I had prepared several amendments to be introduced by Congressman Donald Payne of New Jersey and Owens. The Amendment that Owens would introduce was designed to provide protection for students who were previously identified as educationally disabled and suddenly "de-classified" and returned to regular education. The two Amendments that I prepared for Payne would, if adopted, protect incarcerated young people from having educational services withheld in America's juvenile prisons.

I was disappointed, but not surprised, when all three amendments were "shot down" by the ruling party. What I was not prepared for, however, were the "last minute" surprise amendments introduced by Goodling and Representative Riggs of California, that prohibited special education services under IDEA from being provided to older teenagers in juvenile detention centers who had not been previously identified. The assault on FAPE, which guaranteed a free and appropriate education to all children with disabilities in the United States between the ages of 3 and 21, had begun.

PART TWO

JUDICIAL AND LEGISLATIVE BEGINNINGS

Congressional documents will forever list the sponsors of Public Law 94-142, the Education of All Handicapped Children Act of 1975, as Representative John Brademas of Indiana, and Senator Harrison Williams of New Jersey. Certainly, both legislators made significant contributions toward the federal guarantee of a free and appropriate education (FAPE) to all children with disabilities in the United States. Current undergraduate students who are being trained to be special education teachers are of the belief that the guarantée of FAPE was made as a natural extension of the constitution, and without a struggle. Furthermore, those same undergraduate students have expressed the belief that the rights and privileges of FAPE will always be offered to special needs populations and will never be threatened. However, it is important to understand that the current Individuals with Disabilities Education Act is not universally accepted by the members of the Congress or the public at large.

Few are aware of the historical antecedents which made possible the passage of IDEA and the guarantee of FAPE. Perhaps fewer are aware that the struggle for IDEA and FAPE began twenty years before the Law was passed and services were guaranteed in 1975. Still fewer are aware of the individuals who laid the legislative and judicial groundwork which made the Law and FAPE possible. This book will explore the activities of those who made the significant contributions. In

addition, we will explore the activities of those who worked against the initial passage of the Law and FAPE. Finally, we will discuss the current opposing political camps, including the individuals within those camps who will continue to engage in a tug-of-war over the federal mandate and guarantee. The leaders on both sides are dedicated and committed to their positions. In addition, the members of both schools of thought profess that their primary goal is to serve children.

PLESSY VERSUS FERGUSON

On May 18, 1896, the United States Supreme Court rendered a decision that had been on its agenda for several years. The decision in Plessy versus Ferguson has since become perhaps one of the two most criticized Supreme Court decisions in history (the other being the decision in Dred Scott versus Sandford on March 6, 1857). Homer Plessy, who was considered to be one-eighth black, was riding on a "whites only" railroad car out of Louisiana in 1892. Upon his banishment from the car, based on a separate but equal statute, Plessy decided to assert his rights by challenging the constitutionality of the law. The ultimate Supreme Court decision was that the "Separate but Equal" statute, which dealt specifically with railroad accommodations, was not, as Plessy asserted, a violation of his Fourteenth Amendment right to equal protection. Chief Justice Melville Watson Fuller stated in his decision that the statute did not violate anyone's constitutional rights under the law.

The inevitable interpretation of this Supreme Court decision, originally limited to railroad accommodations, was that the concept extended to other public settings, including the public schools. Thus, school segregation was established with legal foundations that extended to the highest court in the land. Associate Justice John Marshall Harlan provided an eloquent, and now famous, dissent which questioned the fundamental doctrine of the decision, that segregation was not discriminatory.

One-half century later, a relentless civil rights attorney, trained at Howard University, prepared to argue a case before the Supreme Court

that would eventually overturn Plessy versus Ferguson.

BROWN VERSUS THE SUPREME COURT OF TOPEKA, KANSAS

In 1950, Thurgood Marshall was serving as an attorney for the NAACP when he learned of the complaints of Reverend Oliver Brown, a minister from Topeka, Kansas. Reverend Brown did not believe it was fair that his seven –year-old daughter, Linda, was not allowed to attend a school close to home. Instead, Linda had to be bused to a school farther away. The reason was due to school enrollment issues that emanated from Plessy versus Ferguson; the closer school was reserved for white children and the school farther away was reserved for black children. Thus, the school children of Topeka, Kansas were protected by the United States Supreme Court.

Thurgood Marshall headed a legal team that argued the case before the Supreme Court for several years. His argument was similar to that of Associate Justice Harlan in 1896; the Doctrine of "Separate but Equal" was, by its nature, discriminatory. John W. Davis, a former solicitor general of the United States, argued against the challenge to the "Separate but Equal" doctrine, The case had received a great deal of advance publicity by the time opening arguments were presented by Marshall and Davis on December 9, 1952. Specifically, it was Davis's job to convince the Court that the Fourteenth Amendment was violated by such a doctrine. In addition, the Court had already answered the challenge fifty-four years earlier, when it rendered the Plessy versus Ferguson decision.

Since the Supreme Court had been historically resistant to reversing itself, it appeared that Davis had a strong advantage. Indeed, many

pundits believed that the doctrine would not be deemed to be a violation of the Fourteenth Amendment. However, Marshall had a strong record when arguing cases before the Supreme Court. In fact, he argued more than a score of cases before the Supreme Court and lost only two.

An unexpected turn of events may have affected the outcome of the case. It was expected that the chief Justice of the Supreme Court, Frederick M. Vinson, would agree with Chief Justice Fuller's decision in 1896, thus continuing the judicial support of school segregation. However, one year later, as the Court was preparing to hear final arguments on the case, Chief Justice Vinson suddenly died. Both sides waited for several months, as President Eisenhower decided who would take his place. Eventually, the President appointed Earl Warren, the conservative Governor of California, as the new Chief Justice of the Supreme Court.

The Court heard final arguments from Marshall and Davis in December, 1952, not hinting at its decision. How the final decision was rendered, and whether the new Chief Justice may have manipulated the Associate Justices, has since been asserted (Schwartz, 1993). Nevertheless, the preliminary decision that determined whether the doctrine of "Separate but Equal" was flawed was presented by the Court on May 17, 1954. School segregation had been declared unconstitutional. An equally important question, regarding how and when the schools would be desegregated, was announced on May 31, 1955. The manner and timetable for desegregation would be left to the States. However, it was the order of the Court that the States should proceed to desegregate the schools "with all deliberate speed".

The lack of specificity regarding how and when desegregation would proceed was not surprising, given the history of the United States Government in the Education of America's Children. Many of the Supreme Court Justices believed in the long held concept that decisions regarding education should be left to the States and local school districts. "With All Deliberate Speed", although noble in its intention, was challenged almost from the beginning. On May 31, 1956, One hundred and one southern members of the Congress announced that they would do all they could to defy the ruling of the Supreme Court to desegregate the schools, and urged local school districts to resist. Nevertheless, twenty years later, the concept of "With all deliberate speed" would play a role in the education of children with disabling conditions.

POLITICAL CONFUSION

Adam Clayton Powell may have done more to nullify disparities in federal services to schools, based on the racial make-up of the students, than any other member of the Congress. Although a colorful figure and a trend setter, Powell tended to make as many enemies as friends in the Congress. A conspicuous nemesis was Sam Gibbons.

Sam Gibbons was a southern democrat. A war hero, and survivor of the D-Day invasion of Normandy in World War II, Gibbons came home with political aspirations that eventually led to a seat in the House of Representatives. He began his career in the Congress as a "Dixiecrat" and finished his career as one of the most liberal members of the House. He was elected in 1962, and served as a member of the Education and Labor Committee during he period of President Lyndon Johnson's Great Society. As the Chairman of the Subcommittee on Poverty, Gibbons believed in, and supported legislation to help the poor. However, he was unwilling to see legislation be held up because of the "Powell Amendment", which would ensure that no federal dollars went to states that practiced segregation. In short, if federal aid to the poor was legislated, the Powell Amendment ensured that all poor individuals would be eligible to receive such services, regardless of race or creed. Eventually, Gibbons became a member of the powerful Ways and Means Committee, where he patiently served for decades, with his fellow Democrat, Dan Rostenkowski, serving as the Chairman.

Although members of the same political party, Gibbons and Rostenkowski were not allies. They were engaged in a fued for more than thirty years. In 1994, Rostenkowski was convicted of mail fraud and left the Congress. At last, after thirty-three

years in the House, Sam Gibbons became Chairman of the Ways and Means Committee. However, his tenure as Chairman lasted only seven months.. On election day, 1994, the Republicans took control of the House for the first time in forty years. When Congress convened on January 3, 1995, Sam Gibbons became the ranking minority member of the Ways and Means Committee. During this period, he felt that he was not allowed to give input at Committee mark-ups. He retired at the end of that term, citing advancing age and "Republican Gestapo Tactics" in controlling Committee business. The handwriting was on the wall; the free reign of the Great Society was over.

Interestingly enough, this was not the first time that Gibbons felt that Committee business was being run with an autocratic atmosphere. Thirty years earlier, as a member of the Education and Labor Committee, Gibbons asserted that the Chairman was controlling the Committee agenda without regard for the wishes of its members. His solution was simple; remove the Chairman's power. Gibbons led a revolt to take the Chairmanship from the Committee's leader. Two phenomena made this event extraordinary; the Chairman was a member of the same Party as Gibbons, and the Chairman was Adam Clayton Powell. Even more extraordinary, Powell was responsible for pushing through legislation that provided more educational services than anyone before him.

President Lyndon Johnson's Great Society was at its height in 1965. The Democratic Party controlled not only the White House, but the Congress, as well. Moreover, Johnson was still riding high from his 1964 victory over Barry Goldwater, one of the biggest landsides in history. Although Johnson felt that he had a mandate to do whatever he chose, he knew that the carte blanche mandate would

be temporary. If a major education bill was to be passed, it had to be moved through the Congress at once. Wayne Morse would be given the responsibility for moving the legislation on the Senate side. On the House side, the job would be given to Adam Clayton Powell.

This assignment was right up Powell's alley. Since he first took the oath of office as a member of the Congress on January 3, 1945, he had been trying to fashion legislation that would serve the poor. The Great Society had the same agenda. By 1965, Powell had been a member of the Congress for twenty years. In the beginning, he suffered discrimination from the southern members and from racist House employees. Now, however, he was the Chairman of the Committee on Education and Labor, and had proven to be one of the most powerful men on Capitol Hill.

Early in his career, the Congressman from Harlem began to routinely introduce what became known as the "Powell Amendment". Whenever legislation was introduced that was designed to provide social or educational services to the poor, Powell would introduce an amendment that would ensure that people of color would receive the benefits, along with the rest of America. When he became the Chairman of the Education and Labor Committee, Powell would block any legislation that provided economic relief to the needy, unless the Powell Amendment was included in the bill. The Southern Democrats, or 'Dixiecrats', opposed the Powell Amendment as a matter of habit.

The Elementary and Secondary Education Act would become the most ambitious effort by the Congress to provide federal aid to education. Powell immediately held up the bill until it was certain that poor minority children would receive the benefits of the legislation along with the rest of America's

children. As the Chair of the Committee, the Powell Amendment could be used as he saw fit. Over time, two clear implications guided educational services: no individual would be excluded from receiving an appropriate education, nor excluded from receiving services related to that education.

Powell's power, especially in ensuring that no legislation pass through his Committee without the Powell Amendment, infuriated other members of the Congress, including members from his own political party. In 1966, Sam Gibbons led a revolt to strip Powell of some of his powers as Chairman. Specifically, Gibbons wanted to empower the Education and Labor Committee to move legislation through the process without the support of the Chair.

Gibbons believed that the Powell Amendment was preventing needy children from receiving the services that they deserved. Powell believed that without his Amendment, black children would not be the beneficiaries of federal aid to education. In fact, there was foundation for Powell's views. A decade earlier, during the Eisenhower Administration, he invoked the Powell Amendment to block a school construction bill which would only serve white children. Throughout Powell's Congressional career, southern Democrats attempted to steer legislation in order to prevent education spending from reaching black schools. His solution was simple; no legislation would be passed by the Education and Labor Committee without an assurance, through the Powell Amendment, that black schools would receive a piece of the proverbial pie.

Powell had previously named Gibbons as the Chair of the Subcommittee on Poverty, which allowed the Florida Congressman to acquire some fame outside of his District. John Brademus of

Indiana who, In 1965, had been allowed by Powell to introduce the Elementary and Secondary Education Act, the most ambitious education legislation in history, expressed concern about the Powell Amendment to his fellow House members. In addition, Brademus expressed concern about Powell's association with members of the minority community who he (Brademus) believed to be radical.

In the Fall of 1966, the members of the Education and Labor Committee voted twenty-seven to one to strip Adam Clayton Powell of most of his powers as the Chairman. Some claimed that it was a vote against the old southern seniority system, but others knew that it was a vote against the Powell Amendment. However, the worst was yet to come.

The 89th Congress adjourned in the Fall of 1966, not long after stripping Powell of much of his Chairmanship powers. Nevertheless, he was re-elected to the Congress by an overwhelming majority of his Harlem constituents. In addition, the 89th Congress enacted more legislation that provided social and educational services to more individuals than ever before in history. In fact, the 89th Congress had been more active in providing assistance to the poor than the Democratic Congress of Franklin Delano Roosevelt's New Deal.

On January 8, 1967, Adam Clayton Powell, who had been elected by seventy-four per cent of the electorate, presented his credential before the first session of the 90th Congress, and requested to be seated as the Representative of his fellow Harlemites. In response, the United States Congress voted to do something that had occurred less than a handful of times in history; it refused to seat an elected member of the Congress. Following a three-year legal battle, and another e-election as the Representative from

Harlem, Powell was eventually seated and stripped of all seniority, including his Chairmanship. His career as an effective legislator, which had lasted more than twenty years, was now virtually over. Nevertheless, Powell served in a leadership position during the most active period of education legislation in history. The Johnson Administration understood that without Powell, the Elementary and Secondary Education Act would not have been successfully passed. In addition, the Powell Amendment made it virtually impossible to exclude any child from receiving educational services. Over time, the children who received such protection included not only children of color, but those with handicapping conditions.

Powell, emotionally and physically broken by his banishment, lost his bid for re-election in 1970 to Charles Rangel, who has held the seat ever since. Interestingly, nine years after Powell was stripped of some of his powers as Chairman of the Education and Labor Committee, John Brademus introduced a House version of a bill that would eventually guarantee a free and appropriate education to all children with disabilities in the United States. Brademus received strong support from Congressman Sam Gibbons of Florida.

Sam Gibbons continued to serve in the Congress for nearly three decades following Powell's defeat. During that period, he experienced a political, and perhaps cultural evolution. The Sam Gibbons who retired in December, 1994 would have been a strong supporter of the Powell Amendment, which dealt with more than the issues of discrimination. The Powell Amendment also reinforced the theory that the federal government should set social and educational policy for the States. Adam Clayton Powell attached his Amendment to bills over a twenty-year period, from 1946 to 1966. Southern Democrats, who believed in strong States' rights,

believed that this exercise in equality created what southern Democrats viewed as a social revolution. Sam Gibbons saw the social upheaval come full circle during his last year in office as conservative Republicans, who now set the rules, espoused the view that the federal government should leave as much decision making as possible to the States and local communities.

PART THREE

SPECIAL EDUCATION BEFORE THE 88TH CONGRESS

The United States Government played a nearly non-existent role in the education of children with disabilities before the 88th Congress. Before 1963, when the 88th Congress convened, Special Education legislation provided little more than limited funds for research and leadership training in mental retardation and captioned films for the deaf. The federal role in the education of children with disabilities was limited to presenting an advocacy position and leaving the responsibility for educating children with special needs to the States.

Public Law 83-531, the Cooperative Research Act of 1957, reserved two-thirds of a one million dollar appropriation for research in mental retardation. Although this Act of Congress did not mandate any service for disabled individuals, it provided an implicit statement that the Congress was concerned about the welfare of these individuals. Public Law 85-905, passed in 1958, provided for the captioning of films for deaf persons. Public Law 85-926 created grants for leadership training in mental retardation. Public Laws 87-276 and 87-715, passed in 1961, created grants for teacher training in the area of deaf education and provided for the production and distribution of captioned films, respectively.

THE 88TH CONGRESS

The fundamental belief during the 1960's, and among many today, was that education is the primary responsibility of the States and local school districts. Nevertheless, the 88th Congress firmly established a federal role in the education of America's children. In addition, the 88th Congress mandated significant growth in the role that Special Education would play in the greater educational community. It cannot be overlooked that this Congress met during the final year of President John F. Kennedy's administration and the opening days of Lyndon Johnson's presidency. The Kennedy-Johnson era of presidential politics had a profound impact on the future of Special Education. As is widely known, one of John F. Kennedy's siblings suffered from mental retardation. In addition, the grand-daughter of Lyndon Johnson's Vice-President, Hubert Humphrey, was disabled. This phenomenon had a profound impact on the degree of advocacy from the White House and the influence it would have on legislative initiatives.

The 88th Congress mandated decisions which would mark a new beginning in the federalization of programs for people with disabilities. The Acts of Congress, as reported by Geer, Connor, and Blackman (1964) included Public Law 88-156, the Maternal and Child Health and Mental Retardation Planning Amendments of 1963, which amended the "Social Security Act by providing an increase in maternal, and child health and crippled children's services" (pg.414). Public Law 88-164, the Mental Retardation and Facilities Community Mental Health Centers Construction Act "incorporated a bill on research centers and facilities for the mentally retarded and another on the development of community mental health centers" (pg.411). Public Law 88-204, the Higher Education

Facilities Act of 1963 provided one-third of the funds needed to develop academic facilities for the training of teachers of exceptional children. Public Law 88-210, the Vocational Education Act of 1963, "included funds for individuals with academic and socio-economic handicaps" (pg. 416) that prevented them from succeeding in regular vocational programs.

ESEA AND BEYOND

The suggestion was once made that the 1960's was the decade in which Congress made the greatest contribution to the lives of children with disabilities (Cohen, 1965). Beginning in 1965, and throughout the rest of the decade, unprecedented Congressional mandates occurred. Public Law 89-10, The Elementary and Secondary Education Act of 1965, provided more than $1,300,000 for the nation's public schools (Wirtz and Chalfant, 1965). Disabled and gifted children, as well as the regular school population, were the beneficiaries of this Act of Congress (Bryan and Chalfant, 1965).

National Technical Institute for the Deaf

Public Law 89-36, also passed in 1965, provided for the establishment of the National Technical Institute for the Deaf. The Congress had previously provided for film captioning in 1958, with the passage of Public Law 85-905, in 1958. Four years later, with the passage of Public Law 87-715, the Congress also provided for captioning films, and research in the use of such films for deaf persons. According to Hoag (1965):

> Events leading to the final approval of this legislation demonstrated growing concern among professional educators and the public with the problem of extremely limited opportunities for vocational and technical training for the deaf youth of the nation (pg. 167).

The original planning of the National Technical Institute for the Deaf called for the involvement of at least two hundred students per year and a capacity of six hundred students.

The 89th Congress was also active in mandating services for individuals with special needs. Public Law 89-105, the Community Mental Health Centers Act Amendments of 1965, provided, in addition to other services, "funds for research and demonstration projects for the education of handicapped children and for the construction of at least one research facility" (Council for Exceptional Children, 1965, pg. 195). The second session of the 89th Congress, however, may have provided more significant mandates.

BUREAU ON EDUCATION AND TRAINING FOR THE HANDICAPPED (BEH)

On January 12, 1966, President Lyndon Baines Johnson delivered the State of the Union address, outlining his legislative agenda for the second session of the 89th Congress. During Johnson's address, he motivated some members of the Congress, while causing dismay among others. He was proposing the most ambitious legislative agenda of his presidency, and perhaps one of the most ambitious in American history. President Lyndon Johnson' speech writers, Jack Valenti and Richard Goodwin, worked around the clock on revision after revision until eventually the President had a State of the Union speech that he believed would convince the Congress to support his "Great Society" agenda.

Joseph Califano (who was later to serve as the Secretary of Health, Education, and Welfare under President Jimmy Carter) was serving as Johnson's Chief of Domestic Affairs. He understood Johnson's belief that only a small window of time existed to establish his agenda. Among the proposals was a vigorous plan that would create a school lunch program, supported by the federal government for the first time in history. Johnson's power of persuasion was the preliminary tool with which the White House intended to convince the Congress to support the programs. Thus, the success of the State of the Union address was singularly important, According to Califano:

> That evening, Johnson eclectrified the joint session of the House and Senate with a barrage of new legislative proposals. Calling for a program from the second session of the 89th Congess at least as ambitious as he had asked of the first, the President was interrupted fifty-nine times by applause. Most interruptions were genuine, but just in case, LBJ had told White House aid Marvin Watson to begin clapping at the end of certain lines to spark applause. Valenti's charge was to count the number of applause interruptions so that it would be immediately available to the press for inclusion in their stories (pg. 118).

Since more than a few members of the Congress felt that the President's agenda was unrealistically ambitious, Johnson needed to create an atmosphere that inspired the public, as well as the members of the Congress. Following the State of the Union address, some Congressional members did, in fact, complain to the press about the unprecedented amount of work that lay ahead. However, Califano pointed out that President Johnson "knew it was unlikely that he would ever again have a Congress with so many liberals" and now was the time to accomplish goals which may not be possible in future years.

During the second session, the 89th Congress passed legislation which led to the Council for Exceptional Children (1966) to proclaim that 1966 was "Special Education's greatest legislative year" (pg. 269). IN 1967, Public Law 89-750, amended the Elementary and Secondary Education Act, and included title VI, the Morse-Carey Amendments, which created the National Advisory Committee on Handicapped Children and the Bureau on Education and Training of the Handicapped (BEH). Title VI helped to further establish the federal government's role in special education.

President Johnson, who elicited support for the initial passage of the Elementary and Secondary Education Act and the subsequent amendments, commented in 1968:

> Three years ago, on the occasion of my signing the Elementary and Secondary Education Act, I said that no other law bearing my signature would ever mean more to the future of America. A good educational system is a statement of faith in the future of our society.....Subsequent additions to that Act have provided new services and opportunities for over 5,000,000 of the Nation's handicapped children and youth. We are helping to release a great wealth of human potential that was once wantonly wasted.

The federalization of Special Education was nearly complete. The Bureau on Education and Training for the Handicapped (BEH) opened doors on January 12, 1967. Six months later, the National Advisory Committee on Handicapped Children was formed, twelve members. BEH began with three major divisions: Research, Educational Services, and Training Programs (Gallagher, 1968).

The 90th Congress continued the federal role in special education. Public Law 90-170,the Mental Retardation Amendments of 1967 "added new authority for training personnel and for research in the area of physical education and recreation for handicapped children" (Martin, 1968, pg. 497). Public Law 90-247 amended Title VI and provided for regional resource centers for deaf-blind children. Public Law 90-538, The Handicapped Children's Early Education Assistance Act of 1968, authorized grants to establish experimental preschool programs for disabled children (Lavor and Krivit, 1969). Public law 90-576, the Vocational Education Act Amendments of 1968, required that "at least ten per cent of each state allotment of funds appropriated for any fiscal year, beginning after June 30, 1969, shall be used only for the vocational education of the handicapped" (Forsythe and Weintraub, pg. 753).

The federal government had by now firmly established itself as a major responsible party in the education and welfare of disabled individuals. However, educational services were still not federally guaranteed for children with educationally disabling conditions. Services were prescribed and financial incentives were offered to the States. Nevertheless, no child with a disability was guaranteed the right to a free and appropriate education.

The 91st Congress took another step forward with the passage of Public Law 91-61, which President Richard M. Nixon signed on August 20, 1969. this law authorized a National Center on Educational Media and Materials for the Handicapped (Lavor, Forsythe, Wexler, Duncan, and Mulenson, 1969). The expansion of the federal role in special education continued.

PART FOUR

OPPOSITION FROM THE WHITE H0USE

The early 1970's also marked an uneasy relationship between the White House and liberal coalitions within key Congressional committees. The passage of Public Law 91-230, the Elementary and Secondary Education Act Amendments of 1969, indicated that liberal members of the Congress and lobbyists would be successful in making progressive changes on behalf of children with disabilities, even when the president was not a supporter of such action. President Nixon signed Public Law 91-230 into law on April 13, 1970, although he did not endorse it. It was the President's firm belief that the education of America's children should be left to the States and local districts. The United States Government, he believed, should not be dictating to the States about who should be educated or how they should be educated. However, Congressional support for the bill was so strong that the President dared not veto it. Public Law 91-230 created a new Title VI which "clearly recognized the distinctiveness of the handicapped as a major target population" and consolidated new and existing legislation into a single statute (Martin, Lavor, & Bryan, 1970, pg. 53). Public Law 91-230 was often referred to as the original "Education of the Handicapped Act", although it did not guarantee a free and appropriate education to any child.

Public Law 92-424, the Economic Opportunity Act Amendments of 1972, mandated

that at least ten per cent of all enrollments in Head Start programs be reserved for children with disabilities (Lavor, 1972). Advocates saw this as a step in the right direction. However, one year later new opposition surfaced. Public Law 93-112, the Rehabilitation Act Amendments of 1973, was confronted with more adversity than any other bill up to that time, because it addressed the needs of people with disabilities (Lavor and Duncan). 1972). Section 504 of this reauthorization served as a civil rights mandate that President Nixon did not support. In fact, the President attempted to kill the bill twice, once through a pocket veto, and later through an official veto of the bill. On both occasions, Congress rose to the challenge, by re-introducing the bill following a pocket veto, and later by voting to over-ride the official presidential veto. In essence, Section 504 protected people with disabilities, as well as other groups, from being denied educational and other opportunities as a result of discrimination.

PART FIVE

THE GUARANTEE OF FAPE: PUBLIC LAW 94-142

Harrison Williams was elected to the United States Senate in 1958. An active Democrat, he served until 1982, when the senate expelled him during the ABSCAM scandal. It was a sour ending to a distinguished career of public service, during which, as the Chairman of the Senate Subcommittee on Labor and Public Welfare, he introduced the Senate version of the most important piece of special education legislation ever passed by Congress.

Prior to 1975, no act of federal legislation guaranteed diagnostic and educational services to children with disabilities. Previous legislation provided funding as an incentive to the States to provide special education services. According to this plan, the States had a right to accept or reject the funding, and thus the choice of whether or not to provide such services. However, during the 94th Congress, a bill was introduced in the Senate by Harrison Williams of New Jersey that proposed to guarantee a free and appropriate education to all children with disabilities in the United States who were between 5 and 21 years of age. A comparable bill was introduced in the House of Representatives by John Brademus of Indiana. The final bill was passed and forwarded to the desk of President Gerald Ford for signature, where it remained, unsigned, for eight days. The bill was opposed by President Ford because it would take power away from the States and because it represented the potentially most

expensive piece of legislation for disabled people ever passed by Congress. The bill was a revision of Public Law 91-230, the Elementary and Secondary Education Act Amendments of 1970, and not only guaranteed FAPE to children with disabilities, but mandated that the services be monitored by BEH, thus ensuring compliance among the States.

On June 18, 1975, the Senate engaged in a final floor debate before passing S. 6, as the bill was listed, and sending it to the House of Representatives for consideration. Bob Dole, then a young Senator from Kansas, remarked that although he supported the overall concept of the bill, he was concerned that the federal government was assuming a role that was reserved for the States. Edward Kennedy cautioned about the danger of classifying some non-disabled children as mentally retarded, and placing them in special education classes, unnecessarily. Jennings Randolph, the vibrant Senator from West Virginia, introduced an amendment to the bill that required three IEP meetings per year, rather than the one annual meeting that was eventually prescribed by the bill. Lowell Weicker of Connecticut wanted preschoolers with disabilities between 3 and 5 years of age to be guaranteed a free and appropriate education. The Congress did not support Weicker's preschool concept at the time. However, nine years later, when he generated more power as the Chairman of the Committee on the Handicapped, the Connecticut Senator was successful in adding the preschool population to the list of children to be served.

Despite the mild disagreements of the members of the Senate, the bill was a true bi-partisan effort of the Congress, and was passed by an overwhelming majority in the House and Senate. Nevertheless, President Ford believed that the United States Government could not dictate education policy

to the States, and refused to sign the bill, threatening a pocket veto. In response, advocacy groups conducted a head count of the members of the Congress who would vote to over-ride a presidential veto, or vote to pass the bill a second time, in the event of a pocket veto. Their head count indicated that the support of the bill among the members of the Congress had risen to 97%, thus creating a major political embarrassment for the President, if he did not sign it. Still not totally submissive, when President Ford signed the Education of All Handicapped Children Act into law in October, 1975, he declared that Public Law 94-142 was a mistake for the nation, and that he looked forward to its eventual repeal. On November 29, 1975, the following Article appeared in the Congressional Quarterly:

AID TO EDUCATION OF THE HANDICAPPED APPROVED

Congress Nov. 19 cleared for the president a bill (S.6) to assure the Nation's eight million handicapped children a free and appropriate public school education.

Representing a major new commitment by the federal government, S.6 was regarded by its chief sponsor, Sen. Harrison Williams, Jr. (D.NJ), as the most important education legislation enacted since the landmark Elementary and Secondary Education Act was enacted in 1965.

Williams is Chairman of the Senate Labor and Public Welfare Committee.

The bill faces a possible veto by President Ford. The Department of Health, Education, and Welfare (HEW) has opposed the bill on the grounds that the education of the handicapped is primarily a responsibility of the States. Under S. 6, when fully operational in fiscal 1982, the federal government would provide up to 20 per cent of the extra cost of educating a handicapped child, according to the bill's chief House proponent, John Brademus (D. Ind).

But it appeared that Congress could Override a veto. The House adopted the conference on S.6 Nov. 18 by a 404-7 vote under suspension of the rules, while the Senate adopted it Nov. 19, on an 87-7 vote. Both margins were well over the two–thirds needed for an override (pg. 2591)

President Ford, although opposed to the bill, quickly realized that it would be politically disastrous to veto S.6. Since the bill had bi-partisan support, many of his fellow Republicans would vote to override his veto. Ford had no alternative but to acquiesce to the dictates of the Congress.

In addition to guaranteeing a free and appropriate education to all children with disabilities between the ages of 5 and 21 years, Public Law 94-142 mandated that educational services be provided in the least restrictive environment (LRE). The implicit message of the Law was that disabled children be educated in the environment that was the least restrictive according to the unique needs of the child, based on the severity of the disability. In addition a legal document was mandated. An individualized Education Plan (IEP) was to be designed and implemented for each child. This document would include the remedial interventions necessary for the academic achievement of the child.

Legislation, funding, and programs continued following the passage of Public Law 94-142, and the guarantee of FAPE. Public Law 94-482, the Vocational Education Act of 1976, directly governed "the flow of funds to State and local special education programs" (Laski, 1981, pg. 33). The federal role in education continued with the passage of Public Law 96-88, the Education Consolidation and Improvement Act of 1981. The Education of All Handicapped Children Act (EHA), as passed in 1975 with Public Law 94-142, mandated that an Individualized Education Program (IEP) be developed for each child. When EHA was reauthorized with Public Law 98-199 in 1983, a new document, the Individualized Transition Plan (ITP), was mandated. The ITP, which was designed to help the special education student make a smooth

transition from school to adult living, was to become part of the educational prescription no later than the student's fourteenth birthday.

Positive change for exceptional individuals was now possible. Lavor (1977) stated that an "awareness of what is possible, plus an understanding of the problems should help to make whatever objective each individual may have easier to achieve and realize"(pg. 175). In effect, exceptional individuals were, at least, being provided the opportunity to set new goals that earlier were not considered possible.

The concept of specific learning disabilities was increasingly coming under attack by groups who believed that it should be listed as an educational disability under the Education of All Handicapped Children Act. The U.S. Office of Education (the Department of Education would not become a reality until 1980) understood the need to clearly define this disability if it was going to receive true disability status as a special education phenomenon.

In 1977, the U.S. department of Education declared that, in order for a learning disability to be identified, a discrepancy must exist in one or more of the following areas:

1. Listening Comprehension
2. Oral Expression
3. Reading Comprehension
4. Basic Reading Skills
5. Mathematical Reasoning
6. Mathematical Computation
7. Written Expression

The "Learning Disability" classification quickly became the most prevalent disability that was treated under the Education of All Handicapped

Children Act. Within a relatively short period of time, the classification came under attack as a "bogus" disability, particularly by Dr. Eileen Gardner, a policy analyst for the Heritage Foundation. Dr. Gardner's position regarding special education will be discussed in a later chapter.

PART SIX

THE DEPARTMENT OF EDUCATION PUBLIC LAW 96-88

Perhaps the legislative action which would most affect public education in the 1980's was the establishment of the Department of Education. Public Law 96-88, the Omnibus Budget Reconciliation Act of 1980, included many bills that were consolidated into one major act of legislation during the last days of the Carter administration. Among the mandates, Public Law 96-88 created the United States Department of Education. BEH was replaced by the Office of Special Education and Rehabilitation Services (OSERS). The newly created position of Assistant Secretary of Education for Special Education and Rehabilitation Services (OSERS) consolidated the monitoring of both special education and vocational rehabilitation services under one office. Public Law 95-602, the Developmental Disabilities Act of 1978, established the National Council on the Handicapped (NCH). However, the specific role of NCH was to monitor the National Institute of Handicapped Research. OSERS became the office that implemented public policy and enforced compliance (to federal rules and regulations) among the States.

TRANSITIONAL SERVICES AND VOCATIONAL TRAINING

When Ronald Reagan took the oath of office as President of the United States on January 20. 1980, he made no secret of his wish to dismantle the U.S. Department of Education. His Secretary of Education, Terrell Bell, expressed the view that he hoped to be the last person to serve in that position. Nevertheless, two acts of legislation provided additional support to individuals with disabilities who would be making the transition from school to adult living.

Public Law 98-199, the Education of All Handicapped Children Act Amendments, was signed into law on December 2, 1983. This Congressional action re-established "a new program to stimulate and improve secondary special education and transitional services" (Council for Exceptional Children, 1984). In addition, Public Law 98-199 established grants to the States to develop early childhood special education programs, and support parent training and information. Public Law 98-524, the Vocational Education Act of 1984, also known as the Carl D. Perkins Act", assisted States:

> to expand, improve, modernize, and develop quality vocational education programs in order to meet the needs of the Nation's future and existing work force for marketable skills and to improve productivity and promote growth (the President's Committee on the Employment of the Handicapped, 1984).

OPPOSITION ANEW

According to Madeline Will (1984), who served as the Director of the Office of Special Education Programs during the Reagan Administration, the goals of the Education of All Handicapped Children Act were being achieved. "At the same time", she stated, " there are areas where future improvement is needed". Unfortunately, as rights and services for individuals with disabilities continued to evolve., the Education of All Handicapped Children Act came under attack. Eileen Gardner (1984), the aforementioned policy analyst for the Heritage Foundation, a Washington think tank, criticized the role of the federal government in such programs. According to Gardner:

> Advocates for the handicapped used the civil rights approach to press congress to pass on the questionable assumption that the responsibility for disabled individuals is primarily society's – as a civil right – rather than the family's with the help of society (pg. 1).

Gardner continued:

> The schools should not be required to educate those children who cannot, without damaging the purpose of

> formal education, function in a normal classroom setting (pg. 13).

Gardner also recommended that the United States Department of Education be abolished. The recommendations were not dismissed lightly since, at the time, Gardner was "being considered for a top Education post" (Education of the Handicapped, March 6, 1985, pg. 9).

In response, Lowell Weicker, as the Chairman of the Senate Subcommittee on the Handicapped, summoned Gardner to a Committee hearing in the Spring of 1985. His goal was to clarify Gardner's views on special education, given that it would be the responsibility of any staff member at the Department of Education to uphold the Law. In this case, the Law specifically stated that all children with disabilities between the ages of 5 And 21 were guaranteed a free and appropriate education. During the hearing, Senator Weicker asked Gardner about her philosophy and beliefs regarding the education of disabled children. Gardner, a fundamentalist Christian, replied that it was her belief that God gave disabling conditions to children in order to make them stronger, spiritually.

The public response to Gardner's testimony was deafening. Soon after the hearing, she withdrew her candidacy for a position with the Department of Education. However, the episode reinforced the concept among advocates that there would always be political opposition to educational programs for children with disabilities.

By 1984, several Supreme Court rulings had weakened the effectiveness of legislation which guaranteed rights, services, and protections to people with disabilities. The Grove City decision seriously

damaged the effectiveness of Section 504 of Public Law 93-112. Grove City, a private liberal arts college, argued that it was not bound to extend federally mandated civil rights to individuals in college departments that were not receiving federal funds. The U.S. Supreme Court concurred, thus directly tying in civil rights to federal funding.

Up to that time, parents who had challenged the diagnosis and placement of their disabled children in the courts, and won, were reimbursed for attorneys fees. However, in 1984 the Supreme Court, in Smith versus Robinson, decided that "the victors in special education litigation could not collect attorneys fees under section 504 of the Rehabilitation Act" (Education of the Handicapped, March 6, 1985, pg. 6). The Courts may have failed to recognize the due process rights of prevailing parties (Cohen, 1984). Joseph Ballard, the Associate Director of Governmental Relations of the Council for Exceptional Children, called the Smith versus Robinson decision "one of the most gargantuan cases of free form logic ever" (Education of the Handicapped, March 6, 1985, pg. 6). Senator Lowell Weicker, Chairman of the Senate Subcommittee on the Handicapped, presented a bill, S. 415, the Handicapped Children's Protection Act, to the combat the Smith versus Robinson decision. The bill was passed as Public Law 99-372 in 1986, thus ensuring that parents, who had exhausted the due process procedure, filed litigation, and won in court, would be reimbursed for attorneys' fees.

Lowell Weicker was born in Connecticut in 1931. He graduated from Andover Academy and Yale University in 1952. Following military service, he returned to Connecticut and ran for a seat in the House of Representatives in 1968. Two years later, Senator Thomas A. Dodd announced his retirement, and Weicker ran for the Senate seat and won. From

then outset, he was an aggressive advocate and spokesman for the rights of people with disabilities. When he became the Chairman of the Senate Subcommittee on the Handicapped in 1982, he advanced more legislation for the disabled population than any member of the Congress, before or since.

In 1986, the Congress reauthorized the Education of All Handicapped Children Act, under the leadership of Lowell Weicker. Public Law 99-457 continued the rights, guarantees, and services that were previously mandated. n addition, it lowered the age at which a disabled child would be eligible for FAPE from 5 years to 3 years of age, thus ensuring that preschool programs for disabled children would be created. Public Law 99-457 also addresses needs of infants and toddlers with developmental delays and disabilities. Beginning at birth and continuing until 36 months of age, disabled infants and toddlers would receive early intervention services as prescribed by Part H of the Law. Furthermore, a third legal document, the Individualized Family Service Plan (IFSP), was mandated. Unlike the IEP and ITP, that were child focused, the IFSP was family focused. In order to serve an infant/ toddler, the family would be served as well.

Political correctness necessitated a change in the title of the Education of All Handicapped Children Act. Public Law 101-476, the Individuals with Disabilities Education Act of 1991, continued the guarantee off FAPE. Part H, which included early intervention for infants and toddlers, was not included as part of this reauthorization, but was continued by Congress for one year. Public Law 102-119, the Individuals with Disabilities Education Act of 1992, reauthorized Part H, and included language which made assistive technology a related service, and continued the guarantee of FAPE for students with disabilities from ages 3 to 21 years.

PART SEVEN:
THE POLITICS OF EDUCATIONAL INCLUSION

By the early 1990's, the controversy over appropriate education settings (Inclusion, mainstreaming, etc.) reached a fever pitch. The term MAINSTREAMING, which became a household word in the 1970's, was often replaced during conversations with the term INCLUSION. The focus of the debate shifted from gaining access to special services to allowing children with disabilities to receive the services along side their non-disabled peers. According to Taylor (1994):

> Proponents of full inclusion believe that all students, regardless of the type or severity of their disability, should be taught in the general education classroom at their home school. Their reasoning is that these students are a minority group and denying them access to the general education classroom violates their civil rights.. (pg. 8).

Professional organizations do not agree on the issue of inclusion. The Association on the Severely Handicapped (TASH) supports the concept

of full inclusion, whereas the Council for Exceptional Children (CEC) maintains that full inclusion violates the Least Restrictive Environment (LRE). This concept, supports a full continuum of services, from which an appropriate setting would be selected, according to the unique needs and degree of disability of the child. Certainly, language was included in the Individuals with Disabilities Education Act which supported the concept that children with disabilities should be included with non-disabled peers, whenever practical and appropriate. According to Public Law 101-476, The Individuals with Disabilities Education Act of 1990:

> To the maximum extent appropriate, children with disabilities.... Are educated with children who are not disabled, and with special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The Law also prescribed that services and settings for infants and toddlers with disabilities (ages birth to 36 months) should be selected within the same guidelines. It was specified in Public Law 101-476 that:

> To the maximum extent appropriate, services are provided in natural settings.....in which children without disabilities participate.

This language never mandated FULL INCLUSION, which can be defined as the assignment of every child to a regular class at all times. The Individuals with Disabilities Education Act supported the concept of the Least Restrictive Environment (LRE), which has been interpreted with some variability by the courts. The essence of the LRE concept is that all children are unique and, although an attempt would be made to place a child with a disability in a setting that is the least RESTRICTIVE (segregated from non-disabled peers), a continuum of settings must be available to meet the unique needs of the child. A cascade, or continuum, of services (settings) has evolved over time, and has been attributed to Evelun Deno and Maynard Reynolds, among others. The continuum lists a series of settings, moving from the most restrictive to the least restrictive, according to the child's unique needs and degree of disability.

MOST RESTRICTIVE

Residential Setting
Full-time Special School
Full-time Special Class
Part-Time Special Class
Supplemental Instruction
Regular Class with Consultation

LEAST RESTRICTIVE

Two professional organizations, the Council for Exceptional Children (CEC) and the Association

for the Severely Handicapped (TASH) assumed opposing views regarding INCLUSION. TASH supports only one setting, a regular class for every student. CEC insists that a continuum of services "must be available to all children at all times". TASH's position is based on a civil rights concept that all children have a right to be integrated with their non-disabled peers. CEC, however, believes that children with disabilities must be assigned to educational settings based on their unique needs.

The Council for Exceptional Children's (1993) policy statement is as follows:

> The Council for Exceptional Children (CEC) believes all children, youth, and young adults are entitled to a free and appropriate education and/or services that lead to an adult life characterized by satisfying relations with others, independent living, productive engagement in the community, and participation in society at large. To achieve such outcomes, there must exist for all children, youth, and young adult with disabilities a rich variety of early intervention, educational and vocational program options and experiences. Access to these programs and experiences should be based on individual

educational need and desired outcomes. Furthermore, students and their families or guardians, as members of the planning team, may recommend the placement, curriculum option, and the exit document to be pursued.

CEC believes that a continuum of services must be available for all children, youth, and young adults. CEC also believes that the concept of inclusion is a meaningful goal to be pursued in our schools and communities. In addition, CEC believes children, youth, and young adults with disabilities should be served whenever possible in general education classrooms in inclusive neighborhood schools and community settings. Such settings should be strengthened and supported by an infusion of specially trained personnel and other appropriate supportive practices according to the unique needs of the child.

The LRE VERSUS INCLUSION argument is a passionate one with dedicated professionals and

parents on both sides of the issue. It is unlikely that the argument will be abated any time soon. Compounding the confusion are several court cases which have resulted in conflicting interpretations of the language of the Law.

The 1994 Congressional elections transferred the control of Capitol Hill from the Democratic to Republican Party. The 104th Congress convened on January 3, 1995, with a new agenda: the Contract with America. Discussion during the first session of this Congress included whether the decision to continue the entitlement and civil rights mandate should be transferred to the States and local districts.

Opposition to federal mandates continued. Following the reauthorization of the Individuals with Disabilities Education Act in 1991 (Public Law 102-119), dissenting voices grew louder. On June 4, 1997, President Clinton signed Public Law 105-17, the reauthorization of the Individuals with Disabilities Education Act. By this date, the guarantee of FAPE for children with disabilities had been mandated for more than twenty years. However, a new opposition manifested itself. Furthermore, the opposition focused not only on the issue of States rights versus federal empowerment, but also on the quality and effectiveness of such programs. Specifically, the federal government was called upon to examine the degree to which children with disabilities benefited from such programs.

Public Law 94-142, upon its passage in 1975, included neither the word mainstreaming, nor inclusion. Nowhere in the Law is it stated that children with disabilities must educated in the regular classroom. The intent of the LRE concept was to integrate children with disabilities with their non-disabled peers, whenever feasible. Subsequent court

cases have supported this thinking, with somewhat conflicting interpretations by school administrators. Oberti versus the board of Education (1982) resulted in the court deciding that school districts must exhaust an exploration of possible placements of children with disabilities in regular classrooms before selecting special education settings. Similarly, the courts decided in Daniel RR. Versus the State Board of Education (1989) that a special education setting must be appropriate. In the famous Rowley case (1982), the court ruled that children with special needs must be placed in the least restrictive environment. However, subsequent court decisions have not agreed on a common definition of LRE. In the Oberti case, the Court ruled that the school district must make every effort to place a child with a disability in a regular class. Placement in a special education setting should be made only when it is determined that education in a regular class setting is impossible, even with the implementation of supplementary support. Other judicial decisions, including Schuldt versus the Board of Education (1991) and Barnett versus the Board of Education (1991), recognized settings that were segregated from the regular classroom as the least restrictive environment.

Although proponents of full inclusion cite the right of disabled persons to be educated in a regular, integrated environment, those who support the cascade or continuum of services will cite the right of disabled persons to be educated in an environment which can best meet their individual needs. Furthermore, the Individuals with Disabilities Education Act supports the effort to place the child with a disability in the best environment, according to the unique needs of the child, which may or may not be a regular classroom. According to Heward (1996):

Interestingly, the word mainstreaming does not appear in the IDEA, the federal legislation that generated most of the discussion and debate. As we have seen, what the Law does call for is the education of each child with disabilities in the least restrictive environment, removed no farther than necessary from the regular school program.

The IDEA does not require placement of all children with disabilities in regular classes, call for children with disabilities to remain in regular classes without necessary support services, or suggest that regular teachers should educate students with disabilities without help from special educators and other specialists. It does, however, specifically call for regular and special educators to cooperate in providing an equal opportunity to every student with disabilities (pg. 63).

The term INCLUSION has been proposed by civil rights advocates as a right of every individual

with a disability, and used by school administrators to achieve a political and/ or fiscal agenda. The thought of taking all of the special education students in a school district and placing them in a regular class sounds "cost effective" to school superintendents who envision eliminating the cost of special classes and, perhaps, special education teachers. However, the attractiveness of such a venture tends to dissipate when one considers the support services that would be required in order to include children with mental, medical, emotional, and orthopedic impairments in regular classes.

PART EIGHT:

THE IMPACT OF FAMILY EXPERIENCES ON PUBLIC POLICY AND THE INFLUENCE OF CONGHRESSIONAL STAFF

During the Summer of 1948, Hubert Humphrey was serving as the Mayor of Minneapolis, Minnesota. He was also a candidate for the United States Senate in the upcoming Fall elections. Humphrey was considered to be one of the upstart young Democrats who began challenging the Democratic Party agenda following World War II. As a prospective leader with promise, he was invited to deliver an address at a plenary session of the Democratic National Convention in Philadelphia. Humphrey's response to the invitation was to select a topic that was not yet fashionable within Party circles, and was bound to alienate Southern Democrats: Civil Rights. It was Humphrey's belief that the Democratic Party's destiny was to assume the role of defender of the rights of every American, regardless of race, religion, or national origin.

Humphrey's assertive display of conviction cast him into the national spotlight. At the time, he did not include disabled persons on the list of groups that he claimed to be suffering ongoing discrimination. Years later, when he became the grandparent of a disabled child, Humphrey became one of the country's most outspoken advocates for special education programs.

Much has been written about President John F. Kennedy's sister, Rosemary, who suffered from mental retardation. However, without this occurrence, it is highly probable that there would have been no President's Council on Mental Retardation. Without the Council, it is just as probable that the legislative initiatives of the 1960's that led to services for disabled persons would not have taken place.

Still less has been reported about the disabled daughter of former U.S. Senator and Connecticut Governor Lowell Weicker. When Weicker served as the Chairman of the Senate Subcommittee on the Handicapped during the early 1980's, his most vigorous fellow Subcommittee member was Robert Stafford of Vermont, who had a disabled grandchild. This period of Weicker's reign as the Subcommittee Chairman was the most proactive for children with disabilities. In addition to the provision for transitional services, as part of the Individuals with Disabilities Education Act, the due process procedure for parents was strengthened. Furthermore, parents who disagreed with the diagnosis or placement of their child were assured by the Congress that they would be reimbursed for attorneys' fees, if they successfully litigated following the due process procedure. Perhaps the most significant contribution during the Weicker period was the expansion of FAPE to preschoolers with disabilities, as well as the creation of early intervention programs for infants and toddlers with special needs.

The impact of these relationships between political leaders and disabled individuals is unmistakable. Had JFK'S sister not suffered from a disability, the social agenda regarding people with special needs would not have become a reality. During Hubert Humphrey's tenure as the Vice-

President of the United States, Title VI of the Elementary and Secondary Education Act was passed, which, although it did not guarantee FAPE at the time, created a national agenda for special education. Following the Johnson-Humphrey Administration, Hubert Humphrey returned to the Senate, where, in 1975, he argued vigorously for the passage of Public Law 94-142, which finally guaranteed FAPE to children with disabilities.

During the negotiations that led to Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997, a similar phenomenon took place. Senate Majority Leader Trent Lott, who was not a member of the committee in charge of the reauthorization of IDEA, directed David Hoppe, a member of his staff who had a disabled sibling, to chair a bi-partisan working group of staff members from both houses of the Congress in order to design a new version of the Law.

Public Law 105-17 and the Hoppe working group will be discussed in more depth later in this book. However, the impact of personal family involvement in special education public policy is a matter of record. The members of the Congress who favor the "de-centralization" of the special education mandate remain in significant numbers. Certainly, the CONTRACT WITH AMERICA, which represented much of the agenda of the Republican revolution and power change in Washington following the 1994 elections, remains the base of many current conservative members. As the Speaker of the House, Newt Gingrich (1995) pointed out in his book, To Renew America,:

> Republicans envision a decentralized America in which responsibility is returned

> to the individual. We believe in volunteerism and local leadership. We believe that a country with ten million local volunteer leaders is stronger than one with a thousand brilliant national leaders (pp. 105-106).

The decentralization issue is one that we will discuss in the sections of this book on the Results/ Accountability Initiative and the Hoppe group.

CONGESSIONAL STAFF

The importance of Congressional staff cannot be overlooked. Staff members play as active a role in moving bills through to final passage as do the members of the Congress, themselves. It is often said on Capitol Hill that Congressional office staff serve as spokespersons to constituents. However, committee staffers set policy. Committee staff are referred to as "Professional Staff Members", and usually have a background or training in the area that is addressed in the committee where they serve. The staff members on the Senate Committee on Agriculture, for example, will have an expertise in that area. Similarly, the staff members for the Committee on Intelligence are likely to have an expertise in the area of clandestine operations. Furthermore, committee staff members are often among the most powerful people on Capitol Hill. In many cases, staffers have within their power the ability to set United States policy on domestic and international issues. The original versions of the Elementary and Secondary Education Act (Public Laws 89-10 and 89-750, passed in 1965 and 1966, respectively) and the Education of All Handicapped

Children Act (Public Law 94-142, passed in 1975) illustrate this phenomenon.

Ed Martin, a staff member in the office of Congressman (later Governor of New York) Hugh Carey is a case in point. In 1965, while still a staff member for Carey, Martin earned a post on the coveted Education and Labor Committee, of which Carey was a member. Adam Clayton Powell served as the Chairman of the Committee, during this period of his greatest accomplishments. When the "Federal Aid to Education" bill, which had been a national issue for a decade, materialized as Public Law 89-10, the Elementary and Secondary Education Act of 1965, Martin pointed out that it lacked strong language and support for special education programs. Quickly, Martin caucused with Powell's senior staff, and within one year the Law was amended and reappeared as Public Law 89-750, the Elementary and Secondary Education Act Amendments of 1966. This new legislation provided financial incentives for the states to create special education programs throughout the country.

Ed Martin proved to be a beneficiary of the passage of the revised Elementary and Secondary Education Act. Within a relatively short period of time, he was appointed as the Director of the Bureau on the Education of the Handicapped. Since the Bureau was limited to monitoring special education programs, Martin's role as a policy maker was temporarily curtailed. Nevertheless, Martin was placed in an influential role when Congress designed the language for Public Law 94-142., which guaranteed FAPE to all children with disabilities in the United States between the ages of 5 and 21. More importantly, during the last days of the Carter administration, the United States Department of Education was born, and Ed Martin was appointed s the first ever Assistant Secretary for Special

Education and Rehabilitation Services. In that role, Martin became the number one special education administrator in the United States. Furthermore, he was charged with the responsibility to enforce compliance among the states to Public Law 94-142.

During the period in which the language of Public Law 94-142 was being designed, Harrison Williams, the sponsor of the bill in the Senate, employed Lisa walker as a staffer who not only worked on the language of the bill, but negotiated agreements with staffers for other members of the Congress and representatives from the "Disability Community". Senator Lowell Weicker, who had s broad-based agenda regarding special education, selected staff members to fit that agenda. When it came to Weicker's attention that graduates of secondary special education programs were not making a smooth transition from school to adult living, he brought in Nina Bardroma and Susan Hasazi, both of whom possessed doctorates in special education vocational training, to design the language that would address the issue. The result was Public Law 98-199, The Education of All Handicapped Children Act Amendments of 1983, which created the Individualized Transition Plan (ITP), a document which would include the manner in which a student would be prepared for adult living.

Three years later, Weicker, who may have been the most ambitious special education advocate ever to serve in the Congress, decided to address the needs of infants, toddlers, and preschoolers with disabilities. The issue of serving preschoolers was resolved by changing the earliest age in which children with disabilities would be served (with a guarantee of FAPE) from age 5 to age 3. In order to facilitate the passage of this significant amendment to the Education of All Handicapped Children Act, Weicker employed Jane West, a special education

professional with more than a working knowledge of the needs of children with disabilities. West eventually became the staff director of the Senate Subcommittee on the Handicapped. With the leadership of West and other staffers with specific training, Public Law 99-457, the Education of All Handicapped Children Act Amendments of 1986, created discretionary programs for infants and toddlers with developmental delays and disabilities, from birth to 36 months of age. As part of this Act, service delivery would be documented by the now famous Individualized Family Service Plan (IFSP).

When Senator Tom Harkin became the Chairman of the Senate Subcommittee on Disability Policy, he brought in Robert Silverstein, an attorney who had previously served with the House of Representatives, to serve as the Staff Director. Silverstein eventually presided over two reauthorizations of the Individuals with Disabilities Education Act (Public Laws 101-476 and 102-119). During the 105th Congress, Silverstein serving as the Minority Staff Director, participated in the development of Public Law 105-17, the Individuals with Disabilities Education Act of 1987.

PART NINE:

THE RESULTS/ ACCOUNTABILITY INITIATIVE

Public Law 105-17, the reauthorization of the Individuals with Disabilities Education Act, required more than three years of negotiation and debate prior to final passage. The real debate began during the opening days of the 104th Congress, in January, 1995. The Republican Party controlled both Houses of Congress for the first time in forty years. More importantly, the Republican agenda promised to be a "revolution" which would transform the Congressional agenda into perhaps the most conservative direction in nearly seventy years. The primary focus of the agenda was the role of the federal government in dictating policy to the States. Conservative Republicans believed that the power of the federal government should be sharply curtailed. The power, they believed, should be transferred from the federal government to the States and local districts.

The Republican Party was demanding accountability from the education community. Federal dollars spent on education, they asserted, should lead to enhanced academic achievement among school children. In short, the Republican Party expected a financial investment to produce results. Public Schools, it was announced, were not delivering a quality education to the nation's children. As education spending increased, the Republican Party expected (but did not see) a commensurate increase in learning. Since the Republican agenda included the curtailment of big government and the decentralization of power with

selective spending, education appeared to be an unwise investment. Gingrich (1998) echoed the Republican concern:

> Our present day school systems are often impediments to education as well as to learning., but especially to the latter. In our poorest neighborhoods are our poorest schools, measured in student achievement. (They are certainly not our poorest measured in money spent per pupil. On the contrary. In Washington, DC, for instance, where many of the schools have simply appalling records of achievement, the annual expenditure per pupil is approximately $10,000 – among the highest in the land). As a consequence, many of today's school children are being cheated of the opportunity to enter a system of learning, graduating from high school yet barely able to read or write. We owe it not only to our children but to the future of our country to insist that they be given a real education, and beyond this, that there be a well developed system of learning for

Americans of all ages. (pp. 206-207).

Congressman William F. Goodling served as the ranking minority member of the House Committee on Education and Labor prior to and during the 103rd Congress. As a result of the 1994 elections, which gave the Republican Party control of both houses of the Congress, Goodling became the new Chairman of the Committee, which was renamed the House Committee on Economic and Educational Opportunities, when Congress convened on January 3, 1995. Prior to the elections, with Goodling still the ranking minority member, the author was invited by Goodling and his staffer, Hans Meeder, to form a national working group of educators and researchers, who would design pilot projects to be included in the upcoming reauthorization of IDEA. The pilot projects would examine the possible effects of decentralization and parent involvement on the academic achievement of America's special education students. The Goodling/ Meeder working group began its activities within days of the beginning of the 104th Congress, with Goodling serving as the new Chairman, and his Party in control.

Meeder (1995) designed a proposal in the form of questions that needed to be answered by empirical inquiry, and submitted it to the author, who served as the Chairman of the working group. The "Proposed Alternative Plan" focused on the issue of decentralization. The Republican Party's position was that the federal government was too large and, through legislative mandates, was setting policy that should be left to the States and local communities. The members of the working group were instructed to read the series of questions, informally record ideas, and report to a meeting on Capitol Hill within two weeks of the beginning of the 104th Congress.

Meeder prefaced his questions with an assessment of the relevant issues that needed to be examined:

> From its enactment to the present time, the primary focus of the Individuals with Disabilities Education Act (P.L. 94-142) has been ensuring access to education for children with disabilities. Currently, there are 5.2 million children, ages birth-21, being served in special education. There is a general consensus that almost all disabled children are being served in some form. But, there is nothing in the law or regulations that directly speaks to achievement and results for these students
>
> Working with parents, special educators, local and State officials, we would like to see whether a proposal could be developed to allow a limited number of States to operate under "state Innovative Plans". Under these plans, approved by the Secretary of Education, a State could "graduate" beyond the

existing Opportunity to Learn/ Compliance Paradigm and enter into a Results/ Accountability relationship with the federal government. We envision a program in which up to five States that are demonstrating success in restructuring and educating all students, including the disabled, would develop and present to the Secretary of Education an alternative State plan for meeting the objectives of IDEA. If approved, the State could educate children with disabilities under the guidance off the innovation plan for five years, and would measure and be accountable for improving actual educational results for children with disabilities.

Here are some of he questions the proposal would need to address. Please address these issues and raise other issues that need to be dealt with.

Eligibility:

How many States should be allowed to

participate – one, two, five, ten, more?

What level of results would the State have to demonstrate to be eligible for participation?

Are there minimum standards and assessments that would have to be in place within the State in order for it to be eligible?

Would the entire State need to participate, or could just certain jurisdictions within the Statae apply for the Innovation plan?

State Plan:

Are there minimum requirements that the States would have to follow to provide a free, appropriate, public education?

Are there minimum requirements for due process that a State would have to follow?

If educational results are the main focus of the innovation plan and there is a workable

accountability system, is the requirement for education in the "least restrictive environment" necessary or beneficial?

How would the State Innovation Plan be developed and presented to the Secretary of Education? What kind of State policy clearances and community outreach would have to be in place for a plan to be approved? Are there additional clearances and comments that the Secretary would have to consider?

Accountability/ Rewards for Results:

Should there be incentives for the State to exceed its projected increases in student results?

What accountability mechanisms should there be to measure results? What would the federal government do if the results are not achieved?

If the State succeeds in it five year plan, would there be

further steps that could be taken to encourage and allow even greater improvement?

For States that participate, should other activities within the State that are funded through discretionary funds like parent training and personnel development receive a larger share of funding?

The ad hoc working group met on Capitol Hill on January 27, 1995. Also in attendance were staffers from the Congressional Research Service, and the House Committee on Economic and Educational Opportunities. Hans Meeder instructed the working group to design a research project that would examine the affects of assessment, due process, parent involvement, community empowerment, and public policy interventions, on the academic achievement of students in America's special education programs. It was Mr. Meeder's contention (a view obviously shared by Congressman Goodling, for whom Meeder worked) that parents and local communities needed to be empowered to make independent decisions regarding the education of children with special needs. In addition, Mr. Meeder indicated that the States needed flexibility and freedom that would only come if the federal government relinquished some of the power that it acquired through federal mandates.

CONTROVERSY OVER THE PILOT PROJECTS

In the Spring of 1996, the members of the ad hoc working group were notified by the Capitol Hill

staff that the pilot projects would be included in the reauthorization of the Individuals with Disabilities Education Act. However, the research controls that the ad hoc working group recommended would be deleted from the bill. It was the opinion of the members of the ad hoc working group that if the research controls were deleted, the research integrity of the projects would be seriously compromised. For example, instead of selecting two groups of schools (those "doing well" and those "not doing well"), the Capitol Hill staff proposed to select only those schools that already were experiencing a high level of academic achievement among their regular and special needs populations. In response, the ad hoc working group stated that it would withdraw its endorsement of the project unless twelve research controls were included in the description of the research in the bill.

The following list of research controls was sent to the staff of the Committee on Education and the Work Force in May, 1996, with then ultimatum that, unless the controls were adopted by the House Committee, the ad hoc working group would withdraw its endorsement of the project.

Recommendation for Research Controls for the Results/ Accountability Initiative (Ten LEA Projects).

1. The study shall consist of ten project sites, representing all geographic regions of the Country.
2. Each project shall consist of ten school districts. The experimental group for each project site will

consist of five school districts. Each experimental site shall operate under "flexible", innovative regulations and shall autonomously select its regulations. Each control site shall operate under IDEA regulations.

3. Within each project site, each experimental school district will be "paired" with a control school district with a similar demographic make-up, similar number of faculty, similar amount of spending per pupil, both urban oor rural, etc.

4. Half the project sites will be selected from school districts that are already "doing well", and half will be selected from school districts that are "not doing well".

   a. The construct "doing well" will be defined as "being able to demonstrate that a high proportion (50%) of the mildly disabled students achieve satisfactory scores on the statewide

assessments that are administered to the non special needs population.

b. Half the experimental districts and half the control districts will be selected from among those that are "doing well".

c. Half the experimental districts and half the control districts will be selected from among those that are "not doing well".

5. The due process procedure shall be waived for the experimental school districts. However, parents in the experimental school districts. However, parents in the experimental school districts shall have veto power over identification and placement. The control school districts shall operate under the standard IDEA due process procedure.

6. The mildly disabled students in both the control and experimental school districts shall complete

the state -wide assessments that are administered to the non- disabled.

7. Comparisons of student achievement in experimental and control groups shall be made annually and over the course of a five year period. Univariate and multivariate analyses of data will be performed annually and cumulatively over the five year period. All possible independent and interactive variables, such as socio-economic status, population density. Degree of parental involvement and decision making power, and other related variables, shall be included in the analyses. The dependent variable shall be (clearly defined) academic student achievement.

8. Each project site shall include a resource enter, which will provide collaborative services to the school districts and engage in data collection.

9. The education plan that is designed within the experimental school districts shall be family-focused and will more closely resemble the IFSP model. The education plan that is designed within the control school districts shall be child focused and shall be no different from the standard IEP model.

10. The education plan that is designed within the experimental districts shall not have interchangeable goals; the student shall be challenged to meet the original goals, which shall not be changed if the student is not performing satisfactorily.

11. Although data shall be examined annually, no inference regarding the design of such programs, or the revision of existing legislation and service delivery, shall be made until the complete five year cycle of the study has been completed.

12. Informed consent shall be obtained from all participants in the

project. Persons electing to be involved in the projects shall be informed about the risks associated with participation in the project, efforts to minimize those risks, and the option to withdraw from the project at any time.

During a conference on the reauthorization of the Individuals with Disabilities Education Act in April, 1996, the staff members for the leadership of the House Committee on Education and the Work Force indicated to the ad hoc working group that only school districts that were considered to be "doing well" according to the project definition would be included in the proposed pilot projects. When it became apparent that the twelve research controls would not be included in the bill, the ad hoc working group officially withdrew its endorsement of the pilot projects. On June 8, 1996, the following story appeared on the front page of EDUCATION DAILY:

IDEA WAIVER PLAN WOULD SKEW DATA, RESEARCHER SAYS

A researcher who helped draft a pilot program for waivers to federal special education rules is criticizing the way a House bill would set up the program.

H.R. 3268 would not set parameters that researchers sought in designing a study of waivers to the Individuals with Disabilities

Education ACT (IDEA), says Sal Pizzuro, a special education consultant in New Jersey, who has withdraw his support for the program.

He and other researchers the House Economic and Educational Opportunities Committee asked to design the program called for a diverse group of 10 districts- with both high and low student achievement --- to be matched with a group of schools that would not have IDEA waives.

But the House bill would not authorize waivers for 10 districts that are not doig well, and has no provisions for studying a comparable group. "If you arbitrarily select schools that are doing well, heck, then in two you will still have schools that are doing well, Pizzuro said.

Congress recently expanded a program of waivers for other elementary and secondary education programs, although it hasn't been used much yet.

Pizzuro said the researchers would ask the Committee to re-establish the controls or drop the IDEA study, but other researchers were unavailable for comment.

> But House GOP staffers deny that they tampered with the research plans. One staffer said Republicans supported the control groups. He pointed out that the bill requires "adequate and reliable data to document steps taken by local educational agencies to create models of reform".
>
> In addition, the pilot project requirements were changed at the request of the Democrats, who were afraid to lift federal restrictions on schools that already had problems, he said.
>
> But House Democratic staffers said they were most concerned that the pilot program would waive even the most basic IDEA provisions, such as individualized education programs and requirements that disabled students be educated in the least restrictive environment.
>
> The researchers "whole idea was hijacked", one Democratic staffer said. (pp.1-2).

The pilot projects and waivers were eventually deleted from the House version of the bill. However, still another dilemma appeared, the exclusion of Congressman, who served on the appropriate Committee, from the table where the final decisions regarding the future of special education would be made.

PART TEN:

THE HOPPE GROUP AND THE FINAL MARK-UP

The Process of delivering a bill from its initial introduction to the point in which it becomes law is an interesting and providential one. For example, if a bill is introduced by a member of the House of Representatives, it is referred to an appropriate committee, which refers it to the appropriate subcommittee for consideration. The members of the subcommittee will hold a "mark-up" meeting of its members, where the language is voted upon. Following the subcommittee mark-up, the bill is referred to the full committee for an additional mark-up. During this process, the language of the bill continues to be changed, as new amendments are introduced and language is deleted. If the bill is still alive (has not been terminated at one of the mark-ups) following the full committee session, it is referred to the House floor for consideration.

A comparable version of the bill will follow the same process in the Senate. When both the House and Senate versions have been passed, they are referred to a conference committee, which includes members of the House and Senate (all of whom should be serving on an appropriate committee and should have already done extensive work on the bill within their respective house of Congress), which will hammer out a unified version of the bill, which is referred to the President's desk for signature.

Nevertheless, the 105th Congress addressed the issue of the reauthorization of the Individuals with Disabilities Education Act in a manner different form all prior reauthorizations. Tent Lott was serving as the junior Senator from Mississippi and as the senate Majority leader. In addition, he was serving as a member of the Senate Committees on Commerce, Science & Transportation, Rules & Administration, and as an ex-officio member of the Select Committee on Intelligence. None of those committees had jurisdiction over educational issues. Certainly, Trent Lott was not in a position to be involved in IDEA, which was referred to the Senate Committee on Labor and Human Resources, of which Lott was not a member.

However, a member of Lott's staff, David Hoppe, had a disabled sibling. As the Senate Majority Leader, Lott decided that Hoppe was thus qualified to lead a supposed bi-partisan effort to develop the language for a bill that would serve as the latest reauthorization of IDEA. The "Hoppe Working Group" included members of the House and Senate. The unusual part of this procedure was that selected members of the appropriate House and Senate committees were excluded from the group. In particular, Representatives Major Owens of New York and Donald Payne of New Jersey (and their staffers), both members of the House Subcommittee on Early Childhood, Youth, and Families, which had legislative jurisdiction over IDEA, were denied seats at the negotiating table.

Both Owens and Payne, and their staffers, had worked on previous reauthorizations of IDEA, and were thus more experienced and knowledgeable about IDEA than Senator Lott, Hoppe, and others who were provided with seats at the table. The fact that Owens and Payne, both African-Americans who represented urban districts, had two of the most

liberal voting records in the Congress, did not go unnoticed.

Representative William F. Goodling, Chairman of the House Committee on Education and the Work Force, cooperated fully with Majority Leader Lott and the Hoppe Working Group. Goodling referred the reauthorization of IDEA to the Subcommittee on Early Childhood, Youth, and Families, chaired by Congressman Frank Riggs of California. Since the Hoppe Working Group ostensibly represented members of the House and Senate, the procedure would obviate the need for a conference committee. On April 23, 1997, David Hope and the Working Group disseminated a "side by side" breakdown of the bill that was being proposed for the reauthorization of IDEA. The side by side was preceded by the following message:

> To: Individuals Interested in the IDEA
>
> From: David Hoppe and the IDEA Working Group
>
> Subject: IDEA Information
>
> Date: April 23, 1997
>
> As previously announced, the IDEA Working Group has completed preliminary proposals for the IDEA bill. Attached is the summary grid of the draft IDEA proposals. Further, last week, Congressional members of the relevant House and Senate

> Committees and representatives from the Administration met and agreed in principal to these proposals.
>
> Following our established procedure, these working proposals will not be finalized until the Working Group has had the opportunity to receive feedback from the advocacy and education communities. Therefore, two additional meetings have been scheduled.
>
> The Working Group will provide relevant information from these meetings to the Members for their consideration before the legislation is finalized.
>
> To that end, you are invited to both IDEA meetings. These meetings are "off the record" and by invitation only (David, Hoppe, 1997).

In fact, the exclusion of individuals from having a seat at the table extended to many members of the Congress and their staffers. In particular, staff members for Congressmen Donald Payne and Major Owens complained that, if they dared attend the Hoppe meetings, they were relegated to sitting on the proverbial sidelines (on a chair against the wall) and were literally barred from sitting at the conference table.

From the beginning, it became apparent that the main area of concern regarding the reauthorization would not be funding. Conservative

members of the Congress were still determined to take the power out of Washington and return it to the States and local communities. In addition, they were determined to repeal the civil rights portion of the Law. FAPE was under serious attack and faced possible extinction. Conservative members proclaimed that they would return the "responsibility of FAPE to the States where it belongs".

Progressive members of the Congress responded that without a strong federal presence, the 1964 Civil Rights Act would not exist. Furthermore, a return of the responsibility for the civil rights portion of the Law to the States could lead to a dissolution of the equal opportunity status of women and people of color, in addition to people with disabilities. One morning Representative Owens rose in the well of the House and suggested that the weakening of funded mandates would be akin to returning to segregated lunch counters.

The Issue of Parent Centers

Congressman Major Owens of New York represented two concerns regarding the reauthorization of the Individuals with Disabilities Education Act. The first dealt with parent centers. The second dealt with the fate of disabled children who were de-classified (determined to be non-disabled) and returned to the regular classroom, without support. Parent Centers, designed to make parents partners in the process, were not funded by IDEA. Owens introduced an amendment which, he hoped, would place all such centers under IDEA, with all associated supports in place. As Owens (1997) indicated:

> This amendment seeks to expand the highly successful community parent resource centers.

There are twenty-six parent centers located in urban and rural areas around the country. However, only five of these centers are funded through IDEA. Many are struggling to survive, jeopardizing the chances parents in those traditionally under-served areas have of participating in their children's education.

These centers provide a variety of services which enable parents to work with their children's schools to ensure that their children receive a Free Appropriate Public Education.

My amendment would double the number of centers receiving funding through IDEA to ensure that more parents can participate fully in their children's education and avoid costly litigation that results from a misunderstanding of the IDEA.

An interesting approach to the guarantee of FAPE was formulated by those in power. Ostensibly, the Congress guaranteed the extension of the civil rights portion of the law, as previously mandated. However, a belief had always existed among the Sates that only children between the ages of 5 and 18 should be guaranteed a public education. In addition, during the final House mark-up of the Individuals with Disabilities Education Act, the issue of educational services for incarcerated youth was addressed. According to prior reauthorizations of the Law, children with disabilities between the ages of 3

and 21, including those currently suspended from school or incarcerated in a youth correctional facility or a prison for young adults, were eligible for services. Moreover, the guarantee of FAPE provided these young people with a civil right which (at least on paper) prevented the denial of such services. Nevertheless, a broad-based anti-crime movement asserted itself in 1997, and its efforts affected the reauthorization of IDEA.

In addition, Congressman William F. Goodling, Chairman of the House Committee on Economic and Educational Opportunities (later renamed Education and the Work Force), and Congressman Frank Riggs, Chairman of the Subcommittee on Early Childhood, Youth, and Families (which had jurisdiction over the reauthorization of IDEA) concluded that special, education funding should not be used to provide services to criminal offenders. Consequently, an amendment was introduced by Goodling and Riggs to achieve that end. Because of their power base at the time, Goodling, a former school administrator, and Riggs, a former police officer from California, were assured a free reign in establishing any revisions that they deemed appropriate, despite the protests of the more liberal members of the Committee. The amendment read as follows:

> Limitation. _ The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to the children:
>
> (i) aged 3 though 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law

or practice, or the order of any court, respecting the provision of public education to children in those age ranges and

(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children who

(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

(II) did not have an individualized education program under this part.

Congressmen Owens and Payne protested this last minute amendment, which, they believed, would have an extreme negative impact on poor children of color, who were over-represented in youth correctional facilities across the United States. Furthermore, it was their belief that many young people eventually became residents of such facilities because a learning problem may have gone undetected. However, the Goodling/ Riggs amendment, which became part of the Law, was based on the premise that if a child was incarcerated in a youth correctional facility and was not diagnosed as learning disabled by age 18, the disability did not exist.

PART ELEVEN

PUBLIC LAW 105-17

The Reauthorization of the Individuals with Disabilities Education Act in 1997 continued the guarantee of FAPE for children with special needs. According to the general provisions of Public Law 105-17:

> Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equal opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities (Part A, Section 601, C).

According to Public Law 105-17, a "Child Find", or identification of all children with disabilities within a State, must be undertaken. The Law specifies that:

> All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are

identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services (Section 612, 3-A).

The specific conditions that determine which children may be identified as having an educational disability are also cited in Public Law 105-17. According to 602-A:

> IN GENERAL- The term 'child with a disability" means a child---
>
> (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (herein after referred to as "emotional disturbance", orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

Public Law 105-17 also provides procedural safeguards to ensure that children will receive a free and appropriate education, guarantee that parents will have a right to due process, should they disagree with the diagnosis or placement of the child, and protect the rights of the child, not withstanding the availability of the parents. According to section 615 of Public Law 105-17, the procedures shall include:

(1) an opportunity for the parents of the child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent evaluation of the child.

An interesting phenomenon occurred in 1986, when the Congress was considering the reauthorization of the Individuals with Disabilities Education Act, which became Public Law 99-457. This reauthorization, which would guarantee FAPE to preschoolers (ages 3 to 5 years) with disabilities, also provided an incentive to the States for the delivery of early intervention services to infants and

toddlers (ages birth to 36 months) who were identified as having a developmental delay:

> The Congress finds that there is an urgent and substantial need (1) to enhance the development of infants and toddlers and to minimize their potential for developmental delay (Section 631, a).

Initially, a specific definition of "Developmental Delay" appeared in the bill. Prior to being sent to the floor of the House and Senate, however, the National School Boards Association decided that it did not agree with the definition, and threatened to withdraw its endorsement of the bill. As a compromise, the definition was deleted from the bill, leaving each State with the responsibility to design its own definition of developmental delay. According to section 632 of Public Law 105-17:

> (1) The term "at risk" infant or toddler means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual
>
> (2) The term "developmental delay", when used with respect to an individual residing in a State, has a meaning given by the State.....

The Individualized Education Program (IEP) and the Individualized Transition Plan (ITP) are clearly defined in section 614 of Public Law 105-17:

> The term "Individualized Education Program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes:
>
> (i) A statement of the child's present levels of educational performance, including.....
> (I) How the child's disability affects the child's involvement and progress in the general curriculum; or
> (II) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
> (ii) a statement of measurable annual goals, including benchmarks, or short-term objectives....

The Individualized Transition Plan is also outlined in Section 614 of Public Law 105-17:

> (vii) (I) beginning at age 14, and updated annually, a statement of the transition service needs of the

child under the applicable components of the Child's IEP that focuses on the child's courses of study (such as participation in advanced placement courses or a vocational education program0;

(III) beginning at age 16 (or younger, if deemed appropriate by the IEP team), a statement of needed transition services for the child, including, when appropriate, a statement of the inter-agency responsibilities.....

THE INDIVIDUALIZED FAMILY SERVICE PLAN
SERVICES FOR INFANTS AND TODDLERS

Services for infants and toddlers with disabilities addressed in Part H of previous versions of IDEA has been spelled out in Public Law 105-17. Unlike the IEP, which is child focused, the IFSP is family focused. According to the Law, the Individualized Family Service Plan must include:

(1) a statement of the infant's or toddler's present levels of physical development, cognitive devekopment, communication development, social or emotional development, and adaptive development, based on objective criteria;

(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

(3) a statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;

(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivery services;

(5) a statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of

the extent, if any, to which the services will not be provided in the natural environment;

(6) the projected dates for initiation of services and the anticipated duration of the services;

(7) the identification of the service coordinator from the profession most immediately relevant to the infant's pr toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and

(8) the rights of parents to use mediation...

SCHOOL DISCIPLINE AND ALTERNATIVE PLACEMENTS

Perhaps the most divisive issue related to the reauthorization of the Individuals with Disabilities Education Act was the issue of agreement over the language on school discipline, school violence, and alternative placements. The disability community,

consisting of professional and parent groups, argued vehemently for two years over the specific language dealing with the term "weapon". The final language of Public Law 105-17 does not specifically define "weapon". According to the Law, a child with a disability may be assigned to an alternative placement if the child brings a weapon to school. Furthermore, if the child's behavior, or act of violence, is not a result of the child's specific disability, the same discipline that is required for non-disabled students may be applied to the special education student.

The Law specifies such action, with a behavioral assessment or amended IEP required as an intervention, when:

> (I) the child carries a weapon to school or to a school function under the jurisdiction of a State or local education agency; or
>
> (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local education agency.

Two California Supreme Court decisions addressed the issue of the "over-identification" of children from minority groups in special education programs. The judicial decision in Diana versus the State Board of Education (1970) supported the assertion by the plaintiff that children from minority groups were disproportionately represented among

the population labeled Educable Mentally Retarded (EMR). The Court affirmed this concept in its decision in the case of Larry P. versus Wilson Riles (1971). The impact of these two cases continues to be addressed in the most recent reauthorization of the Individuals with Disabilities Education Act. As it has been addressed in previous reauthorizations, Public Law 105-17 acknowledges the "over-identification" of children from minority groups as being educationally disabled. According to Section 601-8:

(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.

(D) Although African-Americans represent 16 per cent of elementary and secondary enrollments, they constitute 21 per cent of total enrollments in special education.

(E) The drop out rate is 68 per cent higher for minorities than for whites.

(F). More than 50 per cent of minority students in large cities drop our of school.

The Republican leadership allowed less debate during the final stages of the reauthorization

of Public Law 105-17 than during previous reauthorizations. The house version of the bill was passed by acclamation, with no debate on the House floor. Unlike the House, which requires a two-thirds vote of the members present to suspend the rules, the Senate requires unanimous consent for such action.

PART ELEVEN – A

JOINT LETTER FROM REPUBLICAN LEADERSHIP TO THE DEPARTMENT OF EDUCATION

The Republican leadership from committees in both the House and Senate sent a joint letter to President Clinton's Education Secretary Richard Riley in 1978. It is important to note that, although Republican committees in both Houses controlled the language of Public Law 105-17, the rule and regulations for the implementation of the Law were written by the appropriate Department with the Executive branch of government This is normal procedure. However, the rules and regulations and the Law itself, were being written by opposing political parties. This prompted the following letter:

January 20, 1998

The Honorable Richard Riley
Secretary
U.S. Department of Education
Washington, D.C. 20202

Dear Mr. Secretary:

We are writing to comment on the proposed IDEA regulations published in the October 22, 1997 Federal Register. We wish to commend you for issuing these proposed regulations so quickly after the enactment of Public Law 105-17, the Individuals with

Disabilities Education Act Amendments of 1997. We believe that it is critical that final regulations be in place by the beginning of the 1998-99 school year so that parents, teachers and school administrators understand the full effect of the reforms made by the amendments and the regulations that will implement them.

We appreciate the time Tom Hehir, Director of the Office of Special Education Programs, and his staff have given to Republican and Democrat congressional staff of members of the IDEA working group to explain the rationale behind your proposed regulations and to answer their questions. We hope that such dialogue will enable us to come to mutual agreement on the final regulations in a manner similar to how we came to a bipartisan, bicameral agreement with you on the statutory provisions in P.L. 105-17.

While we have several concerns about particular regulations, let us first indicate a broader concern. We believe that regulatory interpretation of the statute should be minimal, given the specificity of the statute. Specifically, we are concerned about the frequent use of notes included in the regulations and the legal effect of such notes. While we understand that the

purpose of notes is to clarify the regulatory provisions that precede them, we believe that, in too many cases, such notes go well beyond clarification creating a new interpretation that differs from the statutory language. We urge you to write the final regulations as clearly as possible so that the number of notes included are dramatically reduced and used only for clarifications or to provide examples.

We also are concerned that you have used this regulatory process to enact previous Department of Education policy letters that, in our opinion, should be published separately for public comment. As you know, we had numerous extensive debates regarding the issue of policy letters and took steps in the statute to ensure that policy letters of national importance go through the regulatory process and be open to public comment. We do not believe that you should use the regulations for the 1997 IDEA amendments as the venue in which to regulate on long-standing policy letters that the 1997 amendments did not address. We believe that these regulations should only reflect what was enacted in the 1997 amendments. If the statute is silent and there is no legislative history, regardless of whether a policy letter exists on an issue, we believe you should

publish a separate NPRM on that specific issue so that parents and school personnel have the opportunity to focus on a policy letter issue, in its own context.

Discipline [Sections 300.520, 300.526, 300.528, 300.514]

During consideration of the 1997 IDEA amendments, the most controversial aspect of the authorization process was the issue of disciplining students with disabilities. Many long hours and often contentious debate were focused on this issue, but in the end a compromise was reached. We strongly believe that the final regulations affecting the issue of disciplining students with disabilities should mirror the statutory language. The statute clearly lays out how schools can discipline students with disabilities and the procedures that must be followed. We oppose any attempt to deviate in the final regulations from the statute in the area of discipline.

We are pleased that the NPRM allows, as the statute does, school personnel to remove a child with a disability for not more than 10 school days without the provision of educational services. We agree that the statute is clear that this period did not constitute a change in placement. The statute codified

Honig v. Doe that allows school personnel to order a change in placement of a child with a disability to an appropriate interim alternative educational setting, another setting or suspension, for not more than 10 school days.

However, we strongly object to section 300.520 of the proposed regulations which defines 10 school days to be "within a given school year." There is absolutely no statutory basis for this interpretation, nor is there any legislative history to support this interpretation. By codifying Honig v. Doe, the statute is silent with regard to defining 10 school days. We agree with Honig v. Doe as well as the Department of Education's long-standing policy letter that a pattern of suspensions would constitute a change in placement, but we strongly object to the Department of Education, through regulations, overstepping its authority in defining when the "11th day" occurs. In fact, note 1 following section 300.520 seems to contradict the proposed regulations by outlining certain factors that justify a change in placement when a series of removals take place. Section 300.520 is very confusing and will most likely result in litigation. We, therefore, strongly urge you to drop section 300.520(a)(1) so that the final

regulation parallels the text of the statute.

We support the language in the note following section 300.526 allowing an LEA to seek subsequent expedited hearings if school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to an interim alternative educational setting) during the pendency of the due process proceedings. We recommend the language of this note be made part of the final regulation.

Section 300.527 addresses protection of children not yet eligible for special education and related services. This is a sensitive issue that has triggered a substantial amount of litigation in the past. The proposed regulation in section 300.527(b) specifies the standards to be used in determining if school personnel had knowledge of a child's suspected disability prior to a disciplinary action. We strongly recommend that just as section 300.527(b)(1) requires a parent's concerns to be expressed in writing, so should concerns of school personnel, which are addressed in section 527(b)(4), be expressed in writing and given to an appropriate official. This is a legitimate, practical clarification that will provide all parties with a clear, indisputable set of facts about

when and why a child was suspected of having a disability. This simple, reasonable clarification will provide an important guideline to educators and parents that will reduce litigation and encourage child-friendly actions by school systems.

We are very concerned about the proposed regulation at section 300.528(a)(1) that requires a decision within 10 business days of a request for an expedited due process hearing. Such a tight timeline is contrary to what the statute requires. The statute does not define the term "expedited due process hearing". If a parent requests an expedited due process hearing when first informed that school personnel are going to place their child in an interim alternative educational setting, the possibility exists that a child's placement will never be changed if the hearing officer rules in the parent's favor. This will seriously undermine the authority that the statute gives to school personnel to immediately remove children with disabilities who are involved with weapons and drugs as well as the hearing officer's ability to remove children with disabilities who are dangerous to themselves or others for up to 45 days so an interim alternative educational setting. We strongly recommend that the timeline for an expedited due process hearing be

left open to avoid unintended, undesirable consequences and request that 300.528(a)(1) not be a part of the final regulations.

Finally, we believe that section 300.520(b)(1) needs to be clarified so that school personnel understand what they must do within 10 days after taking disciplinary action. The statute requires that school personnel conduct a functional behavioral assessment and implement a behavioral intervention plan within 10 days after taking the disciplinary action. There is a great deal of confusion among school personnel that section 300.520(b)(1) requires the personnel to also implement the behavior interventions addressed by the plan during that same 10 day period. They do not believe 10 days is enough to implement the interventions needed to address the behavior and we agree. Section 300.520(b)(1) further states that school personnel must convene an IEP meeting to develop an assessment plan and appropriate behavioral interventions. This seems to imply such steps take place after the assessment and plan have been developed. We recommend this be clarified so that the assessment plan and appropriate behavioral interventions do not have to be implemented within 10 days of the disciplinary action.

Placement of Child During Proceedings [Section 300.514(c)]

We are concerned that the ability to change the placement of a child with a disability subject to discipline-related and "stay-put" provisions are substantially altered by your proposed regulations in a manner inconsistent with the statute. Your proposal in section 300.514(c) specifies that if an impartial hearing officer in a due process hearing, or a review official in an administrative appeal, agrees with a child's parents to change the child's placement, that placement must be treated as an agreement between the State or local educational agency and the child's parents. Hearing officers and review officials are impartial third parties who determine how disputes between parents and school personnel are to be resolved. This proposed regulation changes their role to an advocate, weakens the stay-put provision, undermines the carefully crafted balance achieved in the discipline provisions in P.L. 105-17, and most importantly, is not a reflection of Congressional intent. We recommend strongly that in the final regulations the provision in section 300.514(c) be deleted, because it has no basis in the statute or in legislative history.

Exception to FAPE for certain ages [Section 300.122]

We agree with the interpretation in the proposed section 300.122 that states the exceptions to providing free appropriate public education (FAPE) to children with disabilities at certain ages based on State law, particularly when such students are incarcerated in adult prisons. However, we strongly disagree with section 300.122(3) and note 1 following it which outline the procedures parents can take. This includes the request for re-evaluation because they consider graduation to be a change in placement if their child did not receive a regular high school diploma. The term "graduation" means that a student has met all the necessary requirements either through a regular high school diploma or other certificate to graduate and leave high school. By issuing such diplomas and certificates the school agrees that the child with a disability has met all the necessary requirements and is qualified to "graduate." In our view, this terminates a school's responsibility to provide FAPE to the child with a disability. There is absolutely no basis in the statute for this regulatory interpretation.

This is a prime example of the Department of Education attempting to turn a policy letter into a binding regulation with the effect of law when there is no mention of this provision in the

statute, no legislative history, and no public input. We strongly believe section 300.122(3) and note 1 should not be included in final regulations.

Regular education teacher participation in IEP-related activities [Section 300.344(a)2), the 2nd paragraph of the note following sections 300.344 and 300.346(d)]

Participation by the regular education teacher in IEP-related activities should reflect flexibility. The proposed regulation in section 300.344(a)(2), as the statute requires, includes the regular education teacher as a member of an IEP team. However, further guidance on the flexibility as to "how" this should occur is not addressed except through one example. Moreover, the context of this involvement "to the extent appropriate", which is referenced in section 300.346(d), does not include examples of what "to the extent appropriate" could mean. Congress, in the House Committee Report, indicated that the regular education teacher should participate in the development and revision of IEPs, to the extent appropriate. Congress did not envision regular education teachers participating in all aspects of IEP-related activities. In the final regulations we recommend strongly that you provide a wide range of

examples about how regular education teacher expertise, knowledge, and concerns may shape IEP development and revision. The final regulations should also clarify that compliance with section 300.344(a)(2) and section 300.346(d) is not limited to the physical presence of regular education teachers in meetings to develop or revise IEPs.

Attorney's Fees [Section 300.507, note following 300.513]

The statute and legislative history do not specify that hearing officers may be allowed to award attorney's fees. The proposed regulations in a note following section 300.513 states that nothing in part B prohibits a State from enacting a law that permits hearing officers to award attorney's fees to parents who are prevailing parties. This issue was debated numerous times in the development of the 1997 amendments and consensus was reached that the only entity with authority to award attorney's fees was the court. In section 615(i)(3)(B), the statute states that "in any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents of a child with a disability who is the prevailing party." If Congress had intended that States have such an

option, it would have specified the option in section 615 of P.L. 105-17. We recommend strongly that the final regulations delete the note following section 300.513, because there is no basis for it in the statute or in legislative history.

We are also very concerned that nowhere in the NPRM are the conditions under which attorney's fees may be reduced reflected. In fact, they are omitted from the proposed regulations. The proposed regulations include the text of section 615(i)(3)(F)(iv) of IDEA as note 2 following section 300.507, but refer to the text as House Committee Report text and not statutory text. The remainder of section 615(i)(3)(F) which outlines when attorney's fees can be reduced is omitted from the regulations entirely. We recommend strongly that the final regulations incorporate as regulatory text, and not as notes, the entire text of section 615(i)(3)(F) from the statute so that provisions on when attorney's fees can be reduced are reflected in the final regulations.

Services [Note following section 300.343]

We object to the note following section 300.343 which requires that IEPs be developed within 60 days of receipt of parental consent to an

evaluation. Specifying that IEPs be developed in 60 days is not a reflection of the statute. In developing P.L. 105-17 Congress was selective and specific when drafting provisions related to timelines. We chose not to set a timetable as specified in the note following section 300.343. Most States have set reasonable, child-friendly timetables pertaining to the initial receipt of IEP services. Federal guidance on this matter is not necessary. In the final regulations, we recommend deleting the note following section 300.343.

Environment [Note following section 300.551]

We are concerned that the note following section 300.551 limits home instruction to children who are medically fragile. The proposed regulation in the note following section 300.551 indicates that home instruction is appropriate for only a limited number of children who are medically fragile. The statute is founded on a premise that educational decisions about children with disabilities be made on an individual basis, including placement decisions. Home instruction has been and will continue to be used on a limited basis, but it seems inappropriate to associate it with children with one cluster of disabilities. Moreover, in

our discussions pertaining to discipline-related provisions, we agreed to remain silent on the use of home instruction. The inclusion of the note undermines that agreement. In the final regulations, we recommend strongly that the note following section 300.551 be deleted because there is no basis for it in the statute or in legislative history.

Definitions

Independent Living [Note following section 300.1]

There are several places in the NPRM where you have included definitions of terms that are not defined in the statute. We do not believe these additional definitions need to be included in the final regulations. The first of these occurs in the note following section 300.1 and defines the term "independent living". There was considerable debate during the statutory process on whether to include a definition of independent living or not in the statute. In the end, the decision was made not to define this term. We oppose inclusion of such definition in the NPRM, especially through a note, and urge you to delete this note in the final regulations.

Comparable Services [Section 300.455], Extended School Year [Section 300.309], Meetings [Section 300.501], and Financial Costs [300.142(e)]

We also oppose the inclusion of definitions of these terms: comparable services in section 300.455, extended school year in section 300.309, meetings in section 300.501 and financial costs in section 300.142(e). None of these terms are defined in the statute and we do not believe the regulations should exceed statutory authority. In the case of extended school year, we understand that this is another policy letter that has been in place for several years. However, the statute is silent with regard to providing services during the summer months and we believe that this is another case where the Department of Education should issue a separate NPRM for public comment. We urge you not to include these new definitions in the final regulations.

General Curriculum [Section 300.12]

In section 300.12, the note defines "general curriculum." While we strongly agree there should not be a separate curriculum for children with disabilities different from that taught to non-disabled children, we do not support a Federal definition

of "general curriculum". We believe this sets a dangerous precedent for the Federal government to begin to dictate what the curriculum should be in each individual school which is specifically prohibited by the General Education Provisions Act. We recommend that section 300.12 and the note following it not be included in the final regulations. However, we believe the following text from the House Committee Report on Public Law 105-17 should be included in a note following section 300.346, the development, review and revision of the IEP: "The Committee wishes to emphasize that, once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it." The addition of this text from the House Committee Report will

clarify that it is the intent of the statute and the final regulations that children with disabilities are included in the general education curriculum and a separate curriculum is not created just for them.

Related Services [Note 1 and 2 following section 300.22]

In note 1 following section 300.22, the definition of related services is expanded to include three new services: travel training, nutrition services, and independent living. The statute very specifically defines what related services are and these three items are not included. Related services are the most expensive services that schools have to provide to children with disabilities and, while on most occasions such services are needed for the child to have a quality education, the majority of these services are outside the special education teacher's expertise. Considerable debate took place during the consideration of the IDEA amendments regarding expanding the definition of related services and the only service that was added was orientation and mobility services. If Congress had intended for travel training, nutrition services, and independent living to be included as related services, the statute would have reflected the addition of these

items. We therefore urge that the final regulations not include these three new services.

We also are concerned that note 2 of section 300.22 expresses the opinion of the Department of Education of how and where travel training should be provided. It is not the purpose of these regulations to reflect the position of the Department of Education. It is the purpose of these regulations to interpret the underlying statute and the amendments made to that statute. Since travel training is not defined or even mentioned in the statute, we believe that all references to travel training, including the last paragraph in note 2, should be dropped.

Charter Schools [Sections 300.17, 300.241]

We are pleased that the Department of Education supports charter schools and worked with us during the statutory process to ensure that children with disabilities have the same opportunities at charter schools as they do at regular public schools. As you know, States define charter schools differently. Some define charter schools as separate LEAs and some define charter schools as "schools within the LEA." Section 300.241 outlines how charter schools must treat children with disabilities which is

consistent with the statute and the House Committee Report. However, the note that follows section 300.17 under the definition of local educational agency, seems to limit the participation of charter schools in Part B to only those that "meet the definition of LEA". This would exclude many charter schools in States that define charter schools as part of the LEA and not as a separate LEA. We recommend that you drop the note under section 300.17 and clarify in section 300.241 that all charter schools must comply with Part B of the IDEA. This will also consolidate all charter school references in one regulatory provision.

Special Education [Note following section 300.24]

The note following section 300.24 seems to expand access to related services. Under IDEA, a child with a disability cannot access a related service unless the child also needs special education. The proposed regulation in the definition of special education states in section 300.24(a)(2) that a related service may be special education if it is considered special education under State standards. This provision gives States the flexibility to define any specific related service as special education. The text of the proposed regulation tracks the text of section 300.17 in the current

regulations. However, the proposed regulation includes a note following section 300.24, that ends with a sentence that could be interpreted as allowing any related services provider to be considered a provider of special education, as long as the provider meets State standards. We recommend strongly that the note following section 300.24 be deleted in the final regulations to eliminate the possibility that individuals may interpret it to mean that a child with a disability, as defined in section 300.7 in the proposed regulations, includes children who only need a related service.

Day [Section 300.8]

Section 300.8, the proposed regulation defines "day" as calendar day unless otherwise indicated as school day or business day. We propose that the term "school day" and "business day" be the terms defined in the regulations because those are the terms specifically used in the statute. We recommend that "school day" be defined as days when children are attending school and that "business day" be defined to mean those days in which a school is open for business when administrative personnel are working. In many instances, a school may be closed over the holidays or on weekends and no one is available to receive

information, notices, or requests. A school should not be found out of compliance with Part B provisions if items were delivered to the school on the day right before the weekend or holiday begins when no one would be available to take action on the request. We urge you to delete section 300.8 so that there is no reference to "calendar day" or "day" and define "school day" and "business day" as noted above.

Methods of Ensuring Services [Section 300.142 and Notes 2, 3 and 4]

We are concerned with section 300.142(e) regarding how to provide services to children with disabilities who are covered by private insurance. The purpose of section 612(a)(12) of the statute is to help local educational agencies access resources from other State agencies to pay for special education services. The statute is silent with regard to private insurance. While we recognize the tremendous need for schools to be able to access numerous resources to pay for special education services, we believe the issue of private insurance coverage of special education services should be debated and considered by the Congress and should not be implemented through these regulations. This is a highly controversial issue and we

recommend that this section of this regulation be deleted as well as notes 2, 3, and 4 that follow this regulation.

Hearing Rights [Section 300.509(a)(3)]

Section 300.509(a)(3) prohibits the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing. While we agree that each party should have evidence in advance of the hearing in order to prepare and perhaps resolve the issue prior to the hearing, we believe this time period should be 5 business days as is required when disclosing additional information. In section 615(f)(2)(A), the statute requires each party to disclose to all other parties, evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least 5 business days prior to a hearing. We recommend that section 300.509(3) use the 5 business days standard to be consistent with the statute as well as the proposed section 300.509(b)(1).

Procedural Safeguards [Sections 300.500, 300.505, 300.507]

School districts do not have a clear understanding of their obligations related to re-evaluations and efforts to secure parental consent. The proposed regulations in section 300.505(a)(iii) references "a new test as part of a re-evaluation". This phrase has been interpreted to mean that educators must secure parental consent when they decide to give a child with a disability any test. In addition, the proposed regulation in section 300.505(c) requires the level of effort made to secure parental consent for re-evaluations to be consistent with the requirements in the proposed section 300.345(d) with regard to securing parental participation in IEP meetings. We recommend strongly that the final regulations clarify what does and does not constitute a re-evaluation and that the level of effort to secure parental consent for re-evaluation give specific examples of what would constitute sufficient effort to obtain parental consent for re-evaluations.

We do not believe that legislation or regulations can mandate parental understanding of the giving of consent for services. The proposed regulation in section 300.500(b)(1)(iii) define parental consent to include understanding that the granting of consent is voluntary and may be revoked. In the final regulations, we recommend that section

300.500(b)(1)(iii) be rewritten to only require that agencies explain that the granting of consent is voluntary and may be revoked.

Section 300.505(d) and (e) regarding selected parental consent requirements appear unnecessary or contradictory. Section 300.505(e) specifies that States may issue consent requirements in addition to those specified in section 300.505(a) as long as the requirements do not deny the provision of a free appropriate public education. It would appear that such guidance is unnecessary given other procedural safeguards in the regulations. Moreover, the need for section 300.505(e) is unclear. It could be interpreted to prohibit what is allowed in section 300.505(d). We recommend that section 300.505(d) and (e) be clarified in terms of their purposes and relationship to each other in the final regulations or be deleted from the regulations entirely.

We believe regulating on the issue of "new" disputes seems unnecessary. The note following section 300.507 specifies that public agencies do not have the authority to deny a parent's request for a due process hearing, even when the agency believes the issues in the dispute are not new. The long-standing procedural safeguards in the statute and the

new provisions added in P.L. 105-17, particularly notification requirements and mediation, should strengthen communication between parents and schools. Thus, the note following section 300.507 would appear unnecessary. Moreover, it does not reflect Congressional intent. In the final regulations, we recommend that the note following section 300.507 be deleted. There is no basis for it in legislative history.

FAPE for children who transition from an IFSP to an IEP [Note 1 following section 300.121, 300.132(b)]

If a child with a disability is entitled to have an IEP in effect on his or her third birthday, this could mean automatic access to an extended school year for those children who turn three in the summer. The proposed regulations in Note 1 following section 300.121 specifies that an IEP or IFSP be in effect by a disabled child's third birthday and section 300.121 specifies that either an IFSP or IEP must be developed and implemented by a child's third birthday. This phrasing could be interpreted to mean that, in order to provide a smooth transition from an early intervention program to a preschool program for children who have their third birthday in the summer, access to extended school

year services is required. We recommend strongly that the proposed regulation in section 300.132(b) clarify that services do not automatically continue for every child with a disability whose third birthday occurs in the summer. We recommend further that the final regulation specify that services may be initiated or continue if the child is served under an ISFP or after an individualized determination that extended school year services are a necessary component of the child's IEP.

Early Intervention Program

After 11 years, the regulations for Part C, the Early Intervention Program for Infants and Toddlers with Disabilities, deserve a thorough review and should be subject to public comment. We strongly recommend soliciting public comment on the current part C regulations and suggestions for improving implementation and maintenance of the program.

As we all know, P.L. 105-17 and its regulations represent the first time in 22 years that the IDEA was thoroughly reviewed and strengthened. We have an opportunity through the final regulations, public statements, and technical assistance to encourage parents and educators to explore multiple ways to provide children

with disabilities with positive, effective educational opportunities. Such an outcome will be more likely if education policymakers at the State and local level foster, and not limit, creative IDEA implementation strategies at the local level. We commend you for suggesting or illustrating flexibility in the proposed regulations and urge you to retain the theme -- "there's more than one way to comply" -- in the final regulations. This will send a powerful, important, and needed message to education officials who are responsible for implementing and monitoring compliance with the final regulations of the IDEA.

In closing, we appreciate the opportunity to comment on these proposed regulations and we hope that you will regulate as little as possible to prevent unnecessary confusion and litigation. We also hope that our comments are helpful to you in explaining legislative intent and that you will continue to work with us on the issues we have raised. We do not believe that the bipartisan, bicameral process that was followed during development of the statute ended on June 4, 1997 when the President signed H.R. 5, the IDEA Amendments of 1997, into law. It is our desire that the bipartisan, bicameral process continue throughout the regulatory phase and that we will work

together to come to agreement on the proposed regulations. We hope you will continue to work with us after the public comment period ends so that the final IDEA regulations will receive broad-based support in Congress and throughout the Nation.

Sincerely,

Bill Goodling, Chairman
House Education and Workforce Committee

Trent Lott, Senate Majority Leader

Frank Riggs, Chairman
Subcommittee on Early Childhood, Youth and Families

James Jeffords, Chairman
Senate Committee on Labor and Human Resources

Dan Coats, Chairman
Senate Subcommittee on Children and Families

Bill Frist, Chairman
Senate Subcommittee on Children and Families

PART TWELVE

AN UNCERTAIN FUTURE

One cannot discount the impact of prevailing political events on public policy and legislation. Arguably, the Elementary and Secondary Education Act (P,L. 89-10, P.L. 89-750) and the education of All Handicapped Children Act (P.L. 94-142) may not have been passed except during the specific periods in which each Act was supported by the Congress. Progressive Congressional leaders had attempted to pass the federal aid to education bill for a decade, beginning in the mid 1950's. Hubert Humphrey may have been the biggest supporter of this bill, long before President Lyndon Johnson claimed it, in the form of the Elementary and Secondary Education Act, as part of his great society. In fact, had John F. Kennedy not been assassinated on November 22, 1963, establishing sympathy for his domestic agenda (inherited by Johnson), the supporters of a federal role in education may have been stalemated by conservative Republicans and Southern Democrats as they had been in the 1950's. In addition, had the 1964 Presidential election not been one of the greatest landslides in history, allowing in Lyndon Johnson's coattails to help elect liberal Democrats, federal aid to education might still be a vague concept. Following the 1964 election, President Johnson and Congressman Adam Clayton Powell knew that they had a short time –perhaps two years – to push the Elementary and Secondary Education Act through to final passage, since the election of more conservative legislators was inevitable.

One must also examine the effect of the Watergate scandal, which controlled the pulse of the nation in 1973 and 1974, on domestic legislation and the liberal social agenda. The Watergate hearings and President Richard Nixon's resignation in 1974 led to a massive Democratic victory in that year's Congressional elections. Many conservative Republicans were replaced by members of the liberal wing of the Democratic Party. Admittedly, many members of the freshman class of the 94th Congress, which commenced on January 4, 1975, were deemed as too liberal by the electorate and were defeated for re-election after one or two terms. Nevertheless, they served in the Congress long enough to pass Public Law 94-142, which guaranteed FAPE to children with special needs. In addition, the 94th Congress had a veto-proof majority during a time when the President, Gerald Ford, was opposed to so strong a federal role in education. In addition, President Ford opposed a federal guarantee of educational services, which never before existed in America's history. In fact, the very concept of a federal guarantee of FAPE contradicted the tradition of the Congress, which left all decision making regarding education to the States and local districts.

It might be safe to say that Representative John Brademus and Senators Harrison Williams and Hubert Humphrey had less than half a decade (1975-1980) to deliver a guarantee of FAPE to children with disabilities. Ronald Reagan was elected President and his agenda included the eventual dismantling of the Department of Education, and the repeal of the Education of All Handicapped Children Act. By the time Reagan's administration began to advance an agenda, Brademus was defeated at the polls and sent back to Indiana, Harrison Williams was convicted during the ABSCAM trials and sent to prison, and Humphrey had passed away. The social liberals of the 1960's were no longer in a position of leadership.

Although the Democratic Party managed to retain control of the House of Representatives, the Republicans acquired leadership of the Senate during most of Reagan's tenure in the White House.

Lyndon Johnson, who as the Senate Majority Leader in the 1950's, could hardly be called a liberal, and who, on occasion, opposed civil rights legislation, became perhaps the most liberal President in the history of the United States. When asked about this dichotomy, Johnson replied that a legislative agenda required three things, "timing, timing, and more timing".

Certainly, the number of children who are served in special education programs continues to grow each year, as indicated by the data provided by the U.S. Office of Special Education and Rehabilitation Services, as illustrated below:

NUMBER OF CHILDREN IN THE UNITED STATES RECEIVING SPECIAL EDUCATION SERVICES

ALL DISABILITIES

1988-1989	4,527,000
1989-1990	4,641,000
1990-1991	4,762,000
1991-1992	4,949,000
1992-1993	5,365,000
1993-1994	5,539,000
1995-1996	5,745,000
1996-1997	5,920,000

LEARNING DISABILITIES

1988-1989	1,970,000
1989-1990	2,050,000

1990-1991_____2,130,000
1991-1992_____2,234,000
1992-1993_____2,351,000
1993-1994_____2,408,000
1994-1995_____2,489,000
1995-1996_____2,579,000
1996-1997_____2,651,000

SPEECH IMPAIRMENTS

1988-1989_____967,000
1989-1990_____973,000
1990-1991_____985,000
1991-1992_____997,000
1992-1993_____994,000
1993-1994_____1,014,000
1994-1995_____1,015,1000
1995-1996_____1,022,000
1996-1997_____1,045,000

MENTAL RETARDATION

1988-1989_____564,000
1989-1990_____548,000
1990-1991_____534,000
1991-1992_____538,000
1992-1993_____518,000
1993-1994_____536,000
1994-1995_____555,000
1995-1996_____570,000
1996-1997_____579,000

SERIOUS EMOTIONAL DISTURBANCE

1988-1989_____376,000
1989-1990_____381,000
1990-1991_____390,000
1991-1992_____399,000
1992-1993_____400,000
1993-1994_____414,000

1994-1995_____427,000
1995-1996_____438,000
1996-1997_____446,000

HEARING IMPAIRMENTS

1988-1989_____56,000
1989-1990_____57,000
1990-1991_____58,000
1991-1992_____60,000
1992-1993_____60,000
1993-1994_____64,000
1994-1995_____64,000
1995-1996_____67,000
1996-1997_____68,000

ORTHOPEDIC IMPAIRMENTS

1998-1989_____47,000
1989-1990_____48,000
1990-1991_____49,000
1991-1992_____51,000
1992-1993_____52,000
1993-1994_____56,000
1994-1996_____60,000
1995-1996_____63,000
1996-1997_____66,000

VISUAL IMPAIRMENTS

1988-1989_____23,000
1989-1990_____22,000
1990-1991_____23,000
1991-1992_____24,000
1992-1993_____23,000
1993-1994_____24,000
1994-1995_____24,000
1995-1996_____25,000
1996-1997_____25,000

MULTIPLE DISABILITIES

1988-1989_____85,000
1989-1990_____86,000
1990-1991_____96,000
1991-1992_____97,000
1992-1993_____102,000
1993-1994_____108,000
1994-1995_____88,000
1995-1996_____93,000
1006-1997_____98,000

DEAF/ BLIND

1988-1989_____2,000
1989-1990_____2,000
1990-1991_____1,000
1991-1992_____1,000
1992-1993_____1,000
1993-1994_____1,000
1995-1996_____1,000
1996-1997_____1,000

AUTISM AND OTHER HEALTH IMPAIRMENTS

1988-1989_____NO DATA
1989-1990_____NO DATA
1990-1991_____NO DATA
1991-1992_____5,000
1992-1993_____19,000
1993-1994_____24,000
1994-1995_____30,000
1995-1996_____38,000
1996-1997_____45,000

PRESCHOOL DISABILITIES

1988-1989_____394,000
1989-1990_____422,000
1990-1991_____441,000

1991-1992_____484,000
1992-1993_____590,000
1993-1994_____634,000
1994-1995_____680,000
1995-1996_____717,000
1996-1997_____737,000

With the exception of the low-incidence disorder of deafness/ blindness, the number of children being served in special education programs is growing by significant numbers each year. Furthermore, the proportion of the local school population being served is growing each year. The inevitable political backlash to this phenomenon is already occurring. Critics of special education programs have launched the argument that the increasing numbers is indicative of the "false identification" of many children as having special needs. In addition, the proportion of school budgets has also grown at an alarming pace, causing a natural backlash by taxpayers and school administrators. Furthermore, the dramatic growth of special education has resulted in a siphoning of funds from regular education programs, resulting in the alienation of parents of non-disabled children and regular educators.

PART THIRTEEN

FUTURE DECISION MAKERS

When President Franklin Roosevelt died of a cerebral hemorrhage on April 13, 1945, Vice-President Harry S. Truman was suddenly thrust into the role of leader of the free world. Mr. Truman was enjoying a glass of bourbon in the office of Speaker of the House Sam Rayburn and the "Board of Education", as Rayburn's closest advisors were referred to, when he was informed that he was to return a telephone call from the White House, without delay. Upon making the call, the Vice-President was told to report to the White House as quickly and quietly as possible. W hen he arrived at the White House, he was greeted by Eleanor Roosevelt, who informed Mr. Truman that the President was dead. According to a well-known story, Harry Truman asked Mrs. Roosevelt if there was anything that he could do, eliciting the famous reply from Eleanor, "Is there anything we can do for you? – For you are the one in trouble, now!"

On election Day in November, 1946, the Republican Party wrested control of both Houses of Congress from the Democrats, and Harry S. Truman found himself to be lame duck President, after only 19 months on the job. Suddenly, he found himself at the mercy of the Republican Majority. Nevertheless, Truman fought back. He referred to the Republican 80th Congress as the "Do Nothing Congress". Indeed, many of the bills dealing with social programs were given no attention by the Republican leadership. Luckily for Truman, his criticism of the 80th Congress was heard by the electorate, who promptly

returned control of both House of Congress to the Democrats via the 1948 election.

The 106th Congress had some similarities to the above scenario. The Republican Party controlled the Congress and a Democratic President, William Jefferson Clinton, controlled the White House. President Clinton often referred to the 106th Congress as the "Do Nothing Congress". The President blamed the Republican controlled Congress for is failure to pass legislation that would support education issues. The Republican leadership, in turn, blamed the President for vetoing bills that would have addressed the issues of school construction and the size of elementary classrooms.

The 107th Congress convened on January 3, 2001. The make-up of the members of the Congress will determine the future of the Individuals with Disabilities Education Act, and the future of Special Education. Some of the strongest detractors of special programs continue to serve in leadership positions in the Congress. Among them is Senator Phil Gramm of Texas, an outspoken critic of special education. In addition, there will be a continued presence of Congressional leaders who support such programs, but with a conservative view. Among them, the best known is Senate Majority Leader Trent Lott. A third group will include members of the Congress who continue to support an unlimited role of the federal government in special education. Among the members of this group, the best known are House Minority Leader Richard Gephart and Senators Ted Kennedy and Tom Harkin.

However, the action of the members of the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and the Workforce (who are not as well known as the aforementioned leaders) may have a profound impact

on the future of special education. In addition, the White House will continue to attempt to influence Congressional policy on education and social issues.

Some of the Congressional leaders who will have an impact on education policy during the 107th Congress include:

Dennis Hastert
Speaker of the U.S. House of Representatives
Born: January 2, 1942
B.A. Wheaton College, 1964
M.A. Northwestern University, 1967

Dennis Hastert, a former high school teacher and wrestling coach, is known for his ability to work successfully with members of the opposing party in the spirit of bi-partisanship. With his Republican Party holding a slim majority in the House, Hastert's interpersonal skills will be a necessary ingredient if the 107th Congress is going to pass significant legislation. Nevertheless, as a fiscal conservative, he may be destined to engage in a philosophical struggle with House Minority Leader Dick Gephart. This struggle may include the role of the federal government, rather than the States and local districts, in making powerful decisions regarding the education of America's children.

Trent Lott
U.S. Senate Majority Leader
Born: October 9, 1941
B.A. University of Mississippi, 1963
J.D. University of Mississippi, 1967

Although Trent Lott is one of the most conservative members of the Congress, he considers himself to be a strong supporter of the Individuals with Disabilities Education Act. He directed his staffer, David Hoppe to create the aforementioned

"Hoppe Working Group", which enabled him to address specific issues within the bill, notably school discipline and parent involvement. Although Senator Lott did not serve on a committee related to education, he asserted his power as the Senate Majority Leader and took partial control of the most recent reauthorization.. He is among the members of the Congress who support returning a substantial amount of the power to the States. Nevertheless, he is unlikely to propose a repeal of the federal guarantee of FAPE. Lott's view of the role of the federal government in the education of America's children, however, is no different than Gerald Ford's was in 1975. Like his fellow Republicans, he believes that the federal government has gotten too big.

Thomas Daschle
U.S. Senate Minority Leader
Born: December 9, 1947
B.A. South Dakota State University, 1969

As the senate Minority Leader, Thomas Daschle's view on issues such as education and social services is closer to that of House Minority Leader Richard Gephart. He is less likely to pursue bi-partisan activities than some of his fellow Democrats, and his political philosophy is the antithesis of Trent Lott's. He is not troubled about the size of government, as is the Senate Majority Leader. Daschle will remain a supporter of proactive legislation for disabled individuals during the 107th Congress. Should the political opposition threaten education programs, Daschle will launch a determined defense. Nevertheless, given the results of the 2000 elections, a threat to current education programs is unlikely.

Richard Gephart
House Minority Leader
Born: January 31, 1941

B.A. northwestern University, 1962
J.D. University of Missouri, 1965

Ricahrd Gephart wants to be the President of the United States or - Speaker of the House of Representatives, in that order. Long considered to be a member of the liberal wing of the Democratic Party, he has promised to cooperate with the Republican leadership during the 107th Congress, in the spirit of bi-partisanship. Nevertheless, as the Congress conducts its agenda in 2001, Gephart will serve as the champion of the groups who he maintains are at the mercy of the Republican Congress, including people with disabilities. Should Gephart become the Speaker following the 2002 elections, his domestic agenda will include school construction, continued support for social security programs, and legislation to enlarge the federal government's role in American education.

House Minority Leader Gephart will do everything possible to forge a working relationship with speaker Hastert. Nevertheless, he will not agree to a weakening of his social agenda, in then spirit of cooperation. The result will be a very partisan agenda on Gephart's part, and eventually a strained relationship with speaker Hastert.

James M. Jeffords
Chairman, U.S. Senate Committee
on Health, Education, Labor,
and Pensions

James Jeffords serves the people of Vermont, where the electorate would like to shrink the size of the federal government. Nevertheless, he is anything but a conservative member of the Senate. When he was first elected in 1988, he replaced Robert Stafford, who, along with Lowell Weicker,

may have been responsible for more proactive special education legislation than any other member of the Congress. Although not quite as left of center as Stafford was, he continually works closely with Ted Kennedy in designing cooperative legislation that supports both regular and special education. He is likely to continue this pattern during the 107th Congress.

John A. Boehner
Chairman, house Committee
On Education and the Work Force
Born: November 17, 1949
B.S. Xavier University, 1977

On January 4, 2001, it was announced that John Boehner would serve as the Chairman of the Committee on Education and the Work Force during the 107th Congress.. Boehner was first elected to the Congress in 1990 and became known as a member of the "Gang of Seven" reform-minded House members. As an original proponent of the "Contract with America" prior to the 1994 elections, Boehner has established himself with the conservative wing of the Republican Party. He is certain to clash with liberal Democrats on the Committee.

Edward Kennedy
Ranking Minority Member
U.S. Senate Committee
on Health, Education, Labor
and Pensions

Ted Kennedy has had a long and checkered career. First elected in 1962 at the age of thirty, his voting record is decidedly liberal. Although his family has been responsible for such proactive programs as the Special Olympics and the President's Council on Mental Retardation, he has allowed his

colleagues to launch special education initiatives. Once those initiatives were launched, however, he provided partisan support. His voting record will not change during the 107th Congress. More importantly, he is not likely to launch a plea for bi-partisanship, should services to children with disabilities be threatened.

Tom Harkin
Member, U.S. senate Committee
On Health, Education, Labor, and Pensions
(Former Chairman, Subcommittee
on Disability Policy)
Born: November 19, 1939
B.S. Catholic University, 1962
J.D. Catholic University, 1972

Tom Harkin served as the Chairman of the Senate Subcommittee on Disability Policy when the Democrats controlled the Congress (the Subcommittee was dismantled when the Republicans took control). A strong advocate for services for disabled children and adults, Harkin will continue in that role during the 107th Congress. He, Ted Kennedy, and Chris Dodd of Connecticut will represent a strong coalition that will launch a vigorous struggle in the unlikely event that programs are threatened.

William Frist
Member, U.S. Senate Committee
On Health, Education, Labor,
and Pensions
Born: February 22, 1952
A.B. Princeton University, 1974
M.D. Harvard University, 1978

Bill Frist was elected to the Senate in 1994, the year that the Republican Party took control of both Houses of Congress for the first time in forty

years. He serves as a member of the Committee on Health, Education, Labor and Pensions, where, although a conservative member of the Senate, he is sensitive to the needs of people with disabilities. Despite his conservative voting record, he supports increased federal funding for schools. A renowned cardiologist prior to his election to the Senate, Frist became famous as a surgeon specializing in heart and lung transplants. He has emerged as a leader with a unique influence on education policy.

Judd Gregg
Member, U.S. Senate Committee
On Health, Education, Labor
And Pensions
Born: February 14, 1947
A.B. Columbia University, 1967
J.D. Boston University, 1972
LL.M. Boston University, 1975

Judd Gregg is another conservative member of the Senate who has a supportive record regarding the Individuals with Disabilities Education Act. In fact, he wants to raise the share federal government's fiscal share of support for special education programs from the current seven per cent to forty per cent, which was the maximum amount authorized, but not appropriated, by the 94th Congress in 1975. Gregg is unlikely to change his position during the 107th Congress.

Christopher J. Dodd
Member, U.S. Senate Committee
On Health, Education, Labor
And Pensions
Ranking Member
Subcommittee on Children and Families
Born: May 27, 1944
B.A. Providence College, 1966
J.D. University of Louisville, 1972

On January 8, 2001, an interesting phenomenon took place on Capitol Hill. The Democrats took control of the United States Senate for the first time in six years. The Democratic Party began a two-week period of controlling the Committee on Health Education, Labor, and Pensions, with Ted Kennedy serving as the chair of the full Committee, and Chris Dodd as the chair of the Subcommittee on Children and Families. In addition, Dodd served as the chair of the Rules Committee during the same interim period. The return to power, however, was short-lived. On January 20, 2001, Dick Cheney was sworn in as the Vice-President, giving the Republicans the deciding vote in the Senate and committee power.

Chris Dodd is the son of Thomas J. Dodd, who served in the House of Representatives and the Senate. Christopher Dodd has one of the most liberal voting records in the Senate. His support of federal aid to education (as well as federal mandates that govern education) is one of the strongest in the Senate. When a conservative threat to the Individuals with Disabilities Education Act was launched in 1995, Dodd was one of the first Democrats to provide an ardent defense of such legislation and programs. He will continue this practice during the 107th Congress.

Major Owens
Member, U.S. House Committee
On Education and the Workforce
Born: June 28, 1936
B.A. Moorhouse College, 1956
M.L.S. Atlanta University, 1957

Major Owens is, without question, one of the most liberal members of the Congress. His career on Capitol Hill has been marked by strident efforts in

support of the poor. Until the Republicans took control of the House in January, 1995, Owens chaired the Subcommittee on Education and Civil Rights (which has since been dismantled by the Republican leadership). Owens was also the most vocal House member in 1995 in opposition to threats by Speaker Newt Gingrich to include the Individuals with Disabilities Education Act in the Unfunded Mandates Provision, which could, have led to the repeal of IDEA unless Congress funded at least eighty per cent of its costs. Owens will continue to be a formidable supporter of special education programs during the 107th Congress.

Thomas E. Petri
Vice-Chairman, U.S. committee
On Education and the Work Force
Born: May 28, 1940
B.A. Harvard University, 1962
J.D. Harvard University, 1965

Thomas Petri served as retired Chairman William F. Goodling's Vice Chairman during the 105th and 106th Congresses. He is a loyal Republican who is more than willing to do the bidding of his Party. Nevertheless, during the process which reauthorized IDEA in 1997, he demonstrated sensitivity to the needs of children with disabilities. That sensitivity will continue during the 107th Congress.

George Walker Bush
President of the United States
Born: July 6, 1946
B.A. Yale University, 1968
M.B.A. Harvard University, 1975

President Bush is mentioned here because of his influence on education policy in the United States. He has proudly claimed to have been a

progressive education advocate when he was the Governor of Texas. It is likely that he will clash with Democrats on the role of the federal government in supporting education programs.

Phil Gramm
Member, U.S. Senate Budget and Finance Committees
Born: July 8, 1942
B.A. University of Georgia, 1964
Ph.D. university of Georgia, 1967

Senator Phil Gramm has been one of the most outspoken critics of the Individuals with Disabilities Education Act in the Congress. He is a recent Presidential candidate and his influence should not be underestimated. He once advocated (on television) that all special education programs be abolished and the money used to educate gifted students, although he claims he was misunderstood.

Marge Roukema
Member, U.S. House Committee
On Education and the Work Force
Born: September 19, 1929
B.A. Montclair State College, 1951

Marge Roukema is the third ranking Republican on the Education and the Work Force Committee. With Chairman William F. Goodling retiring, she could become an influential figure on education policy. Her voting record is to the left of other Republican leaders, which mitigates her power among the leaders of her Party. However, Roukema will serve as an advocate for quality special education programs.

Robert Byrd
Ranking Minority Member
U.S. Senate Appropriations Committee

Born: November 17, 1917
J.D. American University, 1963

Robert Byrd may have the best first-hand knowledge of what it is like to be poor than any current member of the Senate; he grew up in abject poverty during the great Depression in West Virginia. During the depression, he developed a strong belief in the need for the intervention of the federal government to resolve State and local dilemmas. Byrd believes in big government, and is not troubled by the acquisition of federal debt in order to provide programs to Americans in need.

With power sharing in the Senate during the 107th Congress, Byrd will serve as the interim Chairman of the Appropriations Committee, and will almost certainly ask for larger amounts of spending for every domestic program. He is likely to be at odds with the Republican leadership on almost every issue.

Arlen Specter
Member, U.S. Senate Appropriations Committee
Chairman, Subcommittee on Labor,
Health and Human Services, and Education
Born: February 12, 1930
B.A. Yale University, 1931
LL.B. Yale University, 1956

Arlen Specter chairs the very subcommittee that will make decisions regarding the funding formula for the upcoming reauthorization of the Elementary and Secondary Education Act. Although he has characterized himself as a fiscal conservative, his voting record has been more moderate than many conservatives in his political party. Specter, as chairman of the Subcommittee on Labor, Health, and Human Services and Education, will be under pressure to support conservative Republicans who will demand fiscal restraint. The make-up of the

players suggests that Specter will be embattled by education advocates.

PART FOURTEEN

EPILOGUE

The Individuals with Disabilities Education Act is a product of an uncertain phenomenon of history. It is unlikely that Public Law 94-142 could have been passed during any other time in our nation's history. The legislation was a natural phenomenon of the social and political upheaval of the 1960's and 1970's. It was also one of the last vestiges of the Kennedy-Johnson New Frontier/ Great Society. Thanks to the civil rights movement of the 1960's, and the Watergate scandal of 1974, the Congress was made up of an astounding number of liberals Democrats in 1975. In addition, the Republican members were never more moderate in their approach to civil rights and educational issues. Public Law 94-142 was truly a bi-partisan effort, supported over-whelming by both major political parties. The bi-partisan support was so strong that a conservative President, totally committed to the concept that the education of America's children was not the responsibility of the federal government, dared not muster a veto.

The unfortunate consequence of the passage of Public Law 94-142 was that those public servants who made its passage possible would not receive the credit or appreciation that they deserved. Furthermore, credit may have been stolen by individuals whose contribution was minimal, at best. Without Adam Clayton Powell, and the perennial Powell Amendment, Public Law 94-142 would not have been possible. The fact that the first Powell

Amendment was introduced twenty years prior to the passage of Public Law 94-142 does not diminish the contribution of Adam Clayton Powell, or the role that he played. The fact that Powell had been dead for several years before the passage of Public Law 94-142 does not diminish the contribution of Adam Clayton Powell, or the role that he played. Without Thurgood Marshall and his persistent litigious presence, Public Law 94-142 would not have been possible. The fact that the U.S. Supreme Court rendered its decision in Brown versus the Board of Education of Topeka, Kansas more than twenty years prior to the passage of Public Law 94-142 does not diminish the contribution of Thurgood Marshall, or the role that he played. Without the social and civil rights agenda of Hubert Humphrey, beginning with his plenary session speech at the 1948 Democratic Convention, and continuing through his Vice-Presidency and later through his return to the Senate, the passage of Public Law 94-142 would not have been possible. The fact that Humphrey's landmark civil rights speech was made nearly thirty yeas prior to the passage of Public Law 94-142 does not diminish the contribution or the role that he played. Like Powell and Marshall, Humphrey launched a civil rights initiative decades before it was fashionable. Furthermore, Humphrey. who had national political ambitions, launched his initiative at a time when there was no political advantage to do so.

Public Law 105-17 is the law of the land as we enter the 107th Congress. Many of the same issues that were present when Public Law 94-142 was passed in 1975 still exist. A struggle will continue between those members of Congress who believe that the education of America's children is the responsibility of the States and local school districts. (and who believe that education policy can be dictated by no other) and those who believe that the

federal government must be able to supersede State and local law which does not provide the same rights to every individual. It is unlikely that this struggle will abate in the near future.

A second, but equally important struggle will continue regarding the appropriateness of educational settings for children with special needs. Engaging in the struggle will be those individuals who view special education as singularly a civil rights issue, and thus support full inclusion for very child. In opposition is a group that believes that special education children have unique needs, requiring the availability of more than one setting.

A third struggle will continue among those who cannot agree about the appropriateness of our method for identifying educational disabilities. Among the wide range of disabilities, the concept of "learning disabilities" will continue to be questioned. The challenge that Eileen Gardner presented during the early 1980's will continue, with others providing the challenge.

A fourth struggle will be between those who believe that special education, by virtue of its noble goal, is successful and untouchable by critics, and those who recognize that academic achievement among special education students must improve if such programs are to survive. The inevitable measure of special education's success or failure will be the measurable success rate of students after they have made the transition from school to adult living. Unfortunately, both special education's supporters and detractors have actively skewed data in order to bolster their respective positions.

A fifth struggle will continue to be the battle over funding. The States and local districts that want more administrative policy control will want the

federal government to assume more of the costs. This will lead to cost-benefit-analyses of such programs. With some IEP's requiring school districts to spend as much as seven digit figures to educate one special education student, a final showdown is pre-ordained.

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